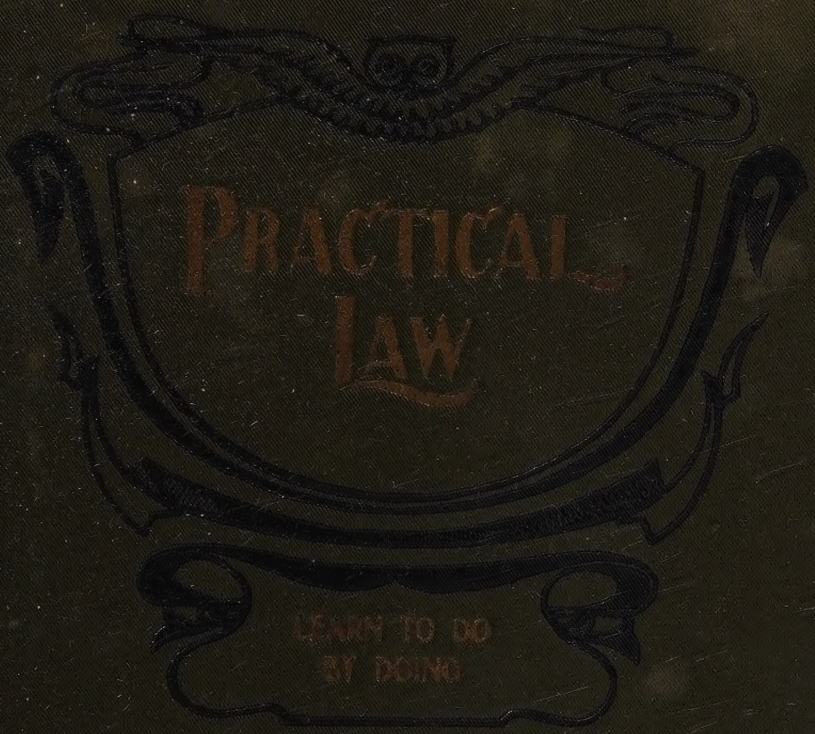
QUIZ MANUAL



QUIZ MANUAL

FOR THE USE OF TEACHERS IN
CONNECTION WITH

PRACTICAL LAW

A text-book on the subject of
Commercial Law

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SUGGESTIONS FOR THE USE OF PRACTICAL LAW QUIZ MANUAL

To the ingenious teacher various methods of using this Manual will present themselves to meet the sundry needs and requirements of different classes of pupils and under varying circumstances.

First. With a well-matured and studious class of students, the teacher will probably use the Manual only as a guide for outlining a logical series of questions on the lesson in hand, to be used during class exercise only, for the purpose of drawing out and stimulating individual members of the class from time to time, as seems necessary, thus enlivening general class discussion.

Second. With a less matured class, it will sometimes be found advantageous to use one recitation hour as a class study period, the teacher providing the questions as outlined in the Manual and the class unitedly searching out the answers thereto in *their* text, "Practical Law." They signify by raised hands when the answers are found, and individually respond when called upon by the teacher. Then, at the next recitation period for this subject, recite with books laid aside, as outlined in the first plan. This plan will be found to work well with "Night School" classes, the members of which have little or no time for outside or home study.

Third. With exceedingly dull pupils, or those who *will not study*, except under strong pressure, we have known of good results being attained by supplementing plan number 2, as follows: During the last quarter of a period of study as outlined in plan 2, have texts laid aside and require the class to copy, from dictation by the teacher, the questions just gone over. Then dismiss the class with instructions to search the text for their answers, to write them out neatly, and to hand them in for examination before the beginning of the recitation the next day. After gathering the papers at the following class period proceed with the recitation as outlined under plan 1.

These, with various alterations and modifications which will readily suggest themselves to every wide-awake teacher, with the continued use of the Manual, will greatly facilitate the teaching of this subject, and make of what is too often considered a "dry" subject, one of absorbing interest and great profit.

PRACTICAL LAW QUIZ MANUAL.

INTRODUCTION.

Art. 1.—Practical Law.

(a) Define Practical Law.

ANS. By Practical Law we mean the rules of conduct governing ordinary business affairs.

(b) What of the necessity of a knowledge of this subject?

ANS. Knowledge of Practical Law is necessary to safe dealing.

(c) Why is it one's duty to know Practical Law?

ANS. It is the legal duty of every good citizen to know the law; hence, ignorance of the law excuses no one.

Art. 2.—The Purposes of Law.

Give the three principal purposes of law.

ANS. (1). In the business world law establishes order, by providing uniform rules of commercial conduct.

(2). Law protects property by defending the rights of the owner.

(3). Law protects rights by forbidding, punishing and redressing wrongs.

Art. 3.—The Study of Law.

(a) What is necessary to become accomplished in the transaction of business?

ANS. Mastery of the principles by which business is governed.

(b) Why is this true today, to a greater degree than formerly?

ANS. Because today business men are generally much better educated than formerly, hence the uninformed in law are likely to suffer.

(c) Can you suggest some ways in which business men uninformed in law are likely to suffer?

ANS. (1) They are prone to overlook necessary precautions.

(2) Through lack of proper care they frequently find themselves victims of errors, deceptions, entanglements, and loss.

(d) Is this study especially difficult?

ANS. No, it is not difficult. Law is mainly common sense.

(e) Upon what is every law said to rest?

ANS. Upon some reason; when we have grasped the reason, we know the law.

Art. 4.—Natural Justice.

(a) What attempt does the law make toward securing natural justice?

ANS. To enforce what is right between man and man, ever keeping in mind the public welfare.

(b) What of conflicting interests between the few, and the many?

ANS. When the interests of individuals, or of the few, conflict with the rights of the many, (the public), the rights of the public will prevail.

(c) Of what does the common law consist?

ANS. The principles of natural justice.

(d) How has the common law gained its existence and its name?

ANS. The common law exists without legislative enactment, and derives its name from the fact that it is common to the whole country.

(e) When do the courts base their opinions upon the common law?

ANS. Whenever they are called upon to decide a matter to which no statute applies.

(f) How are the courts aided and guided in basing opinions upon the common law?

ANS. They are aided, and to some extent guided, by prior decisions called "precedents," rendered in cases involving the same or similar facts.

Art. 5.—Statute Law.

(a) When are laws called statutes?

ANS. When they are reduced to written form by legislative enactment.

(b) In what does the value of statutes consist?

ANS. The peculiar advantage of the statutes over the common law consists in their greater certainty.

(c) In what do the statutes afford greater certainty?

ANS. Courts and people may differ in their views of what constitutes natural justice, but there is less likelihood of doubt about the meaning of a printed page.

(d) What is the "Negotiable Instruments Law?"

ANS. Occasionally several states pass identical laws on some subject of general interest. Thus in 1906 thirty states had adopted a uniform code known as the "Negotiable Instruments Law."

(e) What assurance have we of the wisdom of this statute?

ANS. Into this code have been gathered the rules that have grown up through centuries of practical experience and adjudication.

(f) What is said of the present condition of our laws?

ANS. At present, our laws are in confusion.

(g) What is the general tendency of the states in this regard?

ANS. As instanced in the case of the "Negotiable Instruments Law," the general tendency of the states is toward greater harmony in legislation.

(h) What should be constantly borne in mind by the student, regarding the statutes of the various states?

ANS. The fact that the statutes and court decisions of the several states differ, and that consequently he should refer to the laws of his own state for that precise local information which the scope of this book forbids.

Art. 6.—Constitutionality.

(a) From whence does this government derive all its powers?

ANS. From the consent of the governed.

(b) Give a trite saying of Abraham Lincoln indicative of the nature of our government.

ANS. This is a "Government of the people, by the people, and for the people."

(c) How primarily is this consent of the people given?

ANS. Through the constitution of the United States, which is "the supreme law of the land."

(d) Does each state recognize a similar supreme law?

ANS. Yes, the constitution of each state is that state's supreme law, but it must not conflict with the constitution of the United States.

(e) What is said of laws in conflict with their governing constitution?

ANS. They are void, and are spoken of as being "unconstitutional." They are of no force for any purpose whatever.

WANT OF DUE CARE.

Art. 7.—Importance of the Subject.

(a) What can you say of the importance of the subject "Want of Due Care?"

ANS. Because of its supreme importance this subject is placed first.

(b) From what are nearly all misunderstandings, disagreements and lawsuits said to arise?

ANS. From the want of due care.

(c) What can you say of the results of precipitate haste in business transactions?

ANS. Precipitate haste has ruined hundreds where it has profited one.

(d) What ought one to do if in doubt?

ANS. Seek competent counsel. "He who undertakes to be his own lawyer is apt to have a fool for a client."

(e) Suppose you have done this but are still in doubt; what is it usually best to do?

ANS. Sacrifice time and profit to safety.

(f) Is there ever danger of becoming over-cautious?

ANS. Yes, one should be alert in the avoidance of danger, but not timid; prudent, but not prudish.

(g) Upon what does the accumulation of wealth largely depend?

ANS. Upon the preservation of profits. The retention of wealth depends upon the avoidance of losses.

Art. 8.—Some Special Cautions.

Name as many as you can of the ten special cautions given for safe dealing.

ANS. (1) So keep and deal with your property that it cannot injure others.

(2) In buying property of any kind, be sure of the seller's title.

(3) In ordering goods, be explicit as to kind, quantity, quality, price, and time and manner of delivery.

(4) In receiving goods, examine them promptly and report all discrepancies without delay.

(5) In dealing with the agent of another, assure yourself of his authority.

(6) Sign no document without first knowing its contents and understanding the extent of liability that, by signing, you will assume.

(7) Execute no unconsidered contract.

(8) Assume no indefinite obligation.

(9) Before investing, investigate.

(10) Exercise the utmost care in selecting business associates.

In the words of Thomas Jefferson, "Avoid entangling alliances."

Art. 9.—Due Care.

What is due care?

ANS. (1) Such caution as a prudent person would use under like circumstances.

(2) It is "care according to need."

(3) It is care in proportion to danger.

Art. 10.—Negligence.

(a) Define negligence

ANS. The want of due care.

(b) Of what may negligence consist?

ANS. An act or an omission. It is a failure to perform a legal duty.

Art. 11.—The Penalty of Negligence.

(a) What is the penalty of negligence?

ANS. If my negligence damages another, who is himself without fault, I must answer for it; I must compensate him for his loss or injury.

Art. 12.—Care in One's Own Act.

(a) What does the law hold regarding one's own acts?

ANS. The law holds that everyone intends the natural and direct results of his own acts.

(b) State the liability for cause of injury started.

ANS. The person who sets a cause of injury into motion must answer for the consequences.

Art. 13.—Contributory Negligence.

(a) Who, only, is the law intended to aid?

ANS. Those who are using due care.

(b) If A. is negligent and B. is injured thereby, what must B. show in order to hold A. strictly accountable?

ANS. When a person's own want of care contributes to his injury, he cannot hold another responsible for any portion of the injury, therefore B. must show that he himself was without fault.

(c) Why is this principle held to be right?

ANS. Because to do otherwise would be to permit the injured party to profit by his own neglect.

Art. 14.—Proximate and Remote Cause.

(a) In order to hold a person liable for an injury, what must be done?

ANS. He must be shown to be responsible for the thing which caused the injury complained of.

(b) If there be several possible causes, which cause will the law say the injury arose from?

ANS. From the proximate, or nearest, cause.

(c) What then is the difference between a remote and proximate cause?

ANS. A remote cause is any one of several possible, but not immediate, causes. A proximate cause is the nearest, most direct cause.

Art. 15 —Negligence in Executing Written Instruments.

(a) Name some things which, in writing negotiable instruments such as notes, checks, drafts, etc., would constitute negligence.

ANS. (1) Leaving blanks unfilled.
(2) Writing figures and not words for amounts.
(3) Carelessly formed figures or letters.
(4) Filling out instrument with lead pencil.
(5) Carelessness and lack of sameness in signature.

(b) What may be the consequence if an instrument bearing any of these points of negligence should come into the hands of an innocent third party for value, some changes having been previously made?

ANS. The negligent maker may be bound by the changed terms.

PROPERTY.

Art. 16.—Kinds of Property.

(a) What is included in the term "property?"

ANS. All things capable of individual ownership.

(b) Name two kinds of property.

ANS. Real property and personal property.

(c) Define each.

(1) Real Property, or real estate, consists of land and things attached to land.

(2) Personal Property includes all property other than real estate.

Art. 17.—The Right to Use Property.

How may an owner use his own property?

ANS. As he pleases, with provisions, as follows:

(1) Provided he violates no law.

(2) Provided he injures no one else.

Art. 18.—The Right to Defend Property.

(a) The right to retain and use property, carries with it what other right?

ANS. The right to defend such property even by force, if necessary.

(b) How should this right be exercised?

ANS. With the greatest care, and must not be exercised against an officer of the law who is acting in his official capacity.

(c) How much force may be used when force is allowable?

ANS. No more force may be used than the circumstances require.

(d) When only may property be defended by the use of dangerous weapons?

ANS. In the defense of property only when the wrongdoer is perpetrating or attempting to perpetrate forcible felony.

(e) Of what crime will one be held guilty should he kill a wrongdoer when no forcible felony is perpetrated or attempted?

ANS. Manslaughter.

(f) What of an owner's right to retake property wrongfully withheld from him?

ANS. He may retake his property wherever he may find it, provided he can do so without committing a breach of peace.

Art. 19.—Trover and Replevin.

(a) Define the terms Trover and Replevin.

ANS. When one is entitled to possession of property wrongfully withheld from him he may recover its value by an action at law called "trover", or he may recover the property itself, by a different action at law called "replevin". The owner has his choice.

Art. 20.—Title to Property Lost and Found.

(a) To whom does lost property belong?

ANS. To the owner, and not the finder.

(b) If, after diligent search, the owner of personal property cannot be found, to whom does the property belong?

ANS. To the finder.

(c) Is there any exception to this general rule?

ANS. Yes. Personal property found concealed in other personal

property belongs to the finder, and not to the owner of the personal property in which the hidden property is found. Property found concealed in earth belongs to the owner of the real estate, and not to the finder.

Art. 21.—How one May be Deprived of Property.

In how many and what ways may a person be deprived of his personal property?

ANS. In any of five ways, as follows:

(1) By its destruction.
(2) By its capture by a public enemy.
(3) By judicial process.
(4) By prescription.
(5) By adverse possession.

Art. 22.—Destruction of Property.

(a) How may property be destroyed?

ANS. (1) By natural causes.
(2) By accident.
(3) By the owner's own act.
(4) By the state.

(b) By what authority may the state destroy property?

ANS. The state may, by the exercise of its supervisory authority, called "police power," enter upon the premises of a private person and destroy, without compensation, such property as has an unlawful existence, or is noxious to the public health, public morals, or public safety.

Art. 23.—Capture by Enemy.

What can you say on this subject?

ANS. When property is captured by a public enemy in time of war, the owner is without remedy.

Art. 24.—Seizure Under Process.

(a) Name some purposes for which property may be seized under judicial process.

ANS. (1) Property may be seized under judicial process and sold to satisfy a judgment, or a decree of a court against the owner.

(2) To satisfy unpaid taxes.

(3) Upon just compensation being made to the owner, property may be taken for public purposes.

(b) By what name is this last right known?

ANS. It is known as the "Right of Eminent Domain."

Art. 25.—Prescription.

(a) What is meant by the right of prescription?

ANS. When the owner of land permits another, who is without right, to enjoy privileges therein for a long period of time (usually 20 years

or less) the privilege, if unchecked, will ripen into a right known as "The Right of Prescription."

(b) After this right has once been attained can the owner exercise any power to secure its use?

ANS. He cannot.

(c) Give an example.

ANS. The use of a private road across another's land.

Art. 26.—Adverse Possession.

(a) What is the meaning of this term?

ANS. When one takes possession of another's land and remains openly and uninterruptedly in possession of it for the full statutory period of time, (usually 20 years or less) this possession ripens into a right known as "The Right of Adverse Possession."

(b) Illustrate this.

ANS. The building of a line fence over on a neighbor's land, if undisputed will, after the full statutory period, give the transgressor indisputable right to that land.

GENERAL EXAMINATION NO. 1.

Including the subjects treated in Articles 1 to 26 inclusive appearing in Practical Law. Answers to the following questions should be neatly written and handed to the teacher. Number each answer to correspond with the question. Write your name and the current date on each sheet. Mark your paper Examination No. 1. Write only on one side of the sheets, and avoid erasures, blots, check marks, or other disfigurements.

1. Define Practical Law.
2. What of the necessity of a knowledge of this subject?
3. Give three main purposes of law.
4. What of conflicting interests between the few and the many?
5. Of what does the common law consist, and when do the courts base their opinions upon the common law?
6. How are the courts aided and guided in basing opinions upon the common law?
7. When are laws called statutes, and in what does their advantage over common law consist?
8. From whence does this government derive all its powers?
9. How, primarily, is this consent given?
10. Does each state recognize a similar supreme law, and, if so, what is it called?
11. What can you say of the meaning and the importance of the subject "The Want of Due Care?"
12. Give ten special cautions for safe dealing.

13. Make clear the difference between proximate and remote causes, and give an example of each.

14. Name five points constituting negligence in the writing of negotiable instruments, such as notes, drafts, checks, etc.

15. What may be the consequence if an instrument bearing any of these points of negligence should come into the hands of an innocent third party for value, some changes having been previously made?

16. (a) How many kinds of property? Define each.
    (b) What can you say of a person's right to use his own property?
    (c) Of his right to defend his own property?

17. Define:
    (a) Trover.
    (b) Replevin.

18. Tell what you can regarding the title to property lost.

19. Name four ways in which property may lawfully be destroyed.

20. Give an example of each.

CONTRACTS.—THEIR FORMATION.

Art. 27.—Importance of Subject.

(a) What is a contract?

ANS. An enforcible agreement.

(b) Should contracts be in writing?

ANS. All contracts may be reduced to writing, and some contracts must be in writing.

(c) Are unwritten or oral contracts ever binding?

ANS. All contracts not required by law to be written are equally binding if made orally.

(d) What objection may there be then, to oral contracts?

ANS. The one general objection to oral contracts is their uncertainty.

(e) What proportion of business is carried on by means of contracts?

ANS. Practically all business.

(f) What, then, does the "Law of Contracts" govern?

ANS. All commercial dealings from the simplest to the most complex. Every time a newsboy sells and delivers a paper, a contract is made and executed.

(g) What may be said of contracts as to their particular importance?

ANS. Some subjects of the law are chiefly the concern of lawyers, but this subject concerns every one.

(h) Why is a clear knowledge of contracts of especial value to every one?

ANS. (1) Inability to distinguish between contracts which are legally bad and those which are legally good means inability to act promptly in matters of business.

(2) It means want of independence.
(3) It means lost opportunities.
(4) It means uncertainty, danger and delay.

(i) Is the subject difficult?

ANS. Fortunately, the subject is not difficult. Any attentive, studious pupil can readily grasp its governing principles.

Art. 28.—Meaning of "Enforcible."

(a) We have said that a contract is an enforcible agreement. What is meant by "enforcible?"

ANS. Legally binding.

(b) May an agreement be morally though not legally binding?

ANS. It may. A promise to attend a dinner may be morally binding, but not legally binding.

(c) To what do the courts confine themselves regarding contracts?

ANS. Necessarily to the adjustment of substantial rights.

(d) Suppose A. were to make an unwritten agreement to sell B. a certain piece of land: Would this promise be enforcible?

ANS. No. Because a contract for the sale of land, to be enforcible, must be in writing.

(e) In general, then, when may a contract be said to be enforcible?

ANS. When it is of such character that a court will require either its performance or the payment of damage for its non-performance.

Art. 29.—Class of Contracts.

(a) For convenience, contracts are divided into how many classes?

ANS. Three, as follows:

(1) Valid contracts.
(2) Voidable contracts.
(3) Void contracts.

(b) Define each class.

ANS. (1) A valid contract is one which is unqualifiedly enforcible.

(2) A voidable contract is one which is so defective that one or both parties to it may lawfully disregard it.

(3) A void contract is one which is wholly unenforcible.

(c) Give an example of a voidable contract.

ANS. A contract for things not necessaries, made with one who is under twenty-one years old, is voidable, for he may perform it or repudiate it at will.

(d) Illustrate a void contract.

ANS. An agreement to perform an act prohibited by law is void.

Art. 30.—Forms of Contracts.

(a) As to form, how many and what kinds of contracts have we?

ANS. Two kinds of contracts, written and unwritten.

(b) How may written contracts be expressed?

ANS. In documents, letters or telegrams.

(c) How may unwritten contracts be expressed?

ANS. In spoken words, or in acts.

(d) What do you understand by an "Express Contract?"

ANS. One written or spoken.

(e) What is an implied contract?

ANS. One arising from acts, but not expressed in words.

Art. 31.—A Simple Contract.

(a) Write out a brief, simple contract and point out by letters, thus, (a, b, c, etc.,) the essential elements, which render it, in form, an enforcible contract.

ANS. See agreement page 18, and the examination below.

Art. 32.—Testing a Contract.

(a) Name in their proper order, five essential elements which must appear in every valid contract.

ANS. (1) An agreement.
(2) Properly made and expressed.
(3) Between competent parties.
(4) Upon a sufficient consideration.
(5) To do or not to do a certain thing.

(b) Give six questions which should be asked and answered by one to his full satisfaction in passing upon the validity of a contract.

ANS. (1) Was there an agreement?
(2) Was the agreement properly made and expressed?
(3) Was the agreement between competent parties?
(4) Was the agreement founded upon a sufficient consideration?
(5) Was the agreement to do or not to do a certain thing?
(6) Was the object of the agreement lawful?

AGREEMENT.

Art. 33.—When Agreement Occurs.

(a) When does an agreement occur?

ANS. When the minds of the contracting parties meet in an identical purpose.

(b) Can there be a contract without an agreement?

ANS. There can be no valid contract without an agreement.

Art. 34.—Difference Between Agreement and Contract.

(a) Which is the broader term, Agreement or Contract?

ANS. Agreement is the broader term.

(b) Why?

ANS. All valid contracts are agreements, but not all agreements are valid contracts.

(c) Illustrate the fact.

ANS. An agreement to do that which is unlawful, impossible, or against public policy, is not a valid contract, because the courts will not enforce such agreements.

Art. 35.—How Agreement is Attained.

(a) How are agreements attained?

ANS. Contractual agreements always result from an offer on one side, and an acceptance of the offer on the other.

(b) How may both offer and acceptance be made?

ANS. By words or by acts.

(c) Will a valid agreement of itself establish a contract?

ANS. Not necessarily. It must be remembered that agreement is but one of the several elements of a contract.

Art. 36.—Offer.

(a) How many kinds of offers?

ANS. There are two kinds of offers:

(1) An offer to receive an offer.

(2) An offer to receive an acceptance.

(b) Does acceptance of an offer to receive an offer give rise to an agreement?

(ANS. It does not.

(c) Illustrate this.

ANS. (1) If A. were to write to B. saying: I have some prime butter which I am selling at 20 cents per pound. Would you like some? B. could not bind A to deliver him butter by sending A. an order, therefore, B's order amounts to a mere offer to buy; not an acceptance and is not binding until accepted by A.

(2) If A., in the first example given above, had written to B. saying: "I will ship you 1000 pounds prime butter at 20 cents per pound, delivered," then B.'s acceptance would have bound A. In this second illustration A.'s offer was an offer for acceptance, and B.'s prompt acceptance would have completed an agreement.

Art. 37.—Acceptance.

(a) What must be true of an acceptance, to be effectual?

ANS. It must be co-extensive with the offer.

(b) What can you say of qualified or conditional acceptance?

ANS. It is merely a new offer, and must be itself accepted before an agreement will result.

(c) How does a time limit effect an offer?

ANS. If an offer fixes a time within which it is to be accepted, acceptance cannot be made after the time limit.

(d) What is the case if no time limit is fixed in the offer?

ANS. If an offer fixes no time within which it is to be accepted, the

offer will be held to continue a reasonable time, and, if accepted in a reasonable time, will be binding.

(e) What will be the case if an offer is made to be accepted in a certain time and manner?

ANS. (1) The acceptance, to be effectual, must be made within the time named.

(2) If an offer is made to be accepted in a certain manner, as, for example, by mail, it will be ineffectual.

(f) Will a provision in an offer that silence will be construed as an acceptance, make it legally so?

ANS. No. The offerer can impose no such obligation.

(g) Does an unaccepted offer impose any duty upon the offeree?

ANS. None whatever.

Art. 38.—Revocation.

When may an offer be withdrawn or revoked?

ANS. At any time before acceptance, unless the offerer has, in his offer, fixed a definite time within which to accept, in which case, the offer may be revoked at any time after the stated time.

Art. 39.—Cancellation of Orders.

(a) What is said to be not an unusual occurrence regarding sales by an experienced traveling sales agent?

ANS. It is not an unusual occurrence for an experienced traveling salesman, by the use of his trained powers of persuasion, to induce persons to give orders for articles which, upon sober afterthought, are found undesirable or unnecessary.

(b) In such cases, what remedy is sometimes open to the purchaser?

ANS. If order is taken subject to approval of the "House" Principal, as is generally the case, the deluded purchaser may countermand the order immediately by telephone, by telegraph, or by any other means that will bring his revocation of the order to the attention of the "House" before the latter has had time to make acceptance.

(c) What, usually, is the authority of a traveling sales agent?

ANS. Usually, merely to make an offer to receive an offer, and not to make an offer to receive an acceptance.

(d) When is this the case?

ANS. This is always the case when the "House" reserves the right to accept or reject all orders that the agent procures. This is true even though the order expressly provides that "it shall not be subject to countermand."

Art. 40.—Offer, Acceptance, and Revocation by Mail and Telegraph.

(a) How long does an offer made by mail, hold open?

ANS. Until the letter is received, and for a reasonable time thereafter, unless sooner revoked.

(b) How, then, might an offer by mail be revoked?

ANS. By a telegram, or even by a subsequent letter, provided the revocation reached the offeree before acceptance of the offer.

(c) Suppose the revocation reached the offeree after he had accepted the offer, what would be the effect?

ANS. It would be too late. The offerer would be held to his offer.

(d) When does the acceptance by mail become operative?

ANS. When the letter is mailed.

(e) When does the revocation by mail become operative?

ANS. When the letter is received, and not before.

(f) From the foregoing facts, how do you think is the safest way to make revocation?

ANS. Always by telegram, if possible.

(g) What would be the effect of a letter of acceptance, if never received?

ANS. A letter of acceptance would be binding, though never received, providing the acceptor could prove that the acceptance was mailed.

(h) Will this last rule apply to acceptance by telegram?

ANS. It will, equally well.

MAKING AND EXPRESSING THE AGREEMENT.

Art. 41.—Two Dangers.

Is it possible that the minds of two or more parties may have met upon an identical purpose, and an agreement be reached, and yet a valid contract fail to arise?

ANS. The above is possible because:

(1) The agreement may have been made at an improper time.

(2) It may have been improperly expressed.

Art. 42.—Improper Time.

(a) What is provided by the statutes of most states regarding contracts made on Sunday?

ANS. By statute, in most states, contracts made on Sunday are void.

(b) If A. sells his horse to B. on Sunday, on credit, will the courts aid A. to collect the purchase price?

ANS. No. In many states the courts will not aid either party under an unlawful Sunday contract.

Art. 43.—Contracts Improperly Expressed.

(a) If a contract is oral when the law requires it to be in writing, what may be said of it?

ANS. It is either voidable or void.

(b) Under what provision may all contracts be made orally?

ANS. Unless some statute provides otherwise.

(c) For what purpose do all states have statutes requiring certain important contracts to be in writing?

ANS. The purpose of these statutes is to require the preservation of accurate proof of what was actually agreed upon.

(d) Why is this necessary?

ANS. (1) Because human memory is fallible.

(2) Because it is often biased by selfish interests.

(e) When and how did this law have its source?

ANS. Several centuries ago, during the reign of King Charles of England, it was observed that verbal contracts were a source of many frauds and perjuries; accordingly, during his reign, a statute was passed in England, entitled "An Act for the Prevention of Frauds and Perjuries." This statute made several classes of contracts void unless preserved in writing. Nearly every state in the Union has adopted a Statute of Frauds, modeled, to some extent, upon this ancient act.

(f) Name five classes of contracts which, under the Statute of Frauds of most states, are required to be in writing.

ANS. (1) Contracts which cannot be performed within one year.

(2) Contracts to pay the debt of another.

(3) Contracts made in consideration of marriage, except mutual promises to marry.

(4) Contracts for the sale of any interest in land.

(5) Contracts for the sale of personal property at a price exceeding $50.00.

Art. 44.—Contracts Which Cannot be Performed Within One Year.

(a) How must contracts which cannot, by any possibility, be performed within one year, be made?

ANS. Such contracts must be in writing.

(b) Give an example of such a contract.

ANS. A contract to purchase the output of a factory for three years would be void if merely verbal.

(c) Why?

ANS. Because it is absolutely impossible to carry out this contract in one year.

(d) Would a contract to support another during life be unlawful if made verbally?

ANS. No, it would be valid.

(e) Why?

ANS. Because the death of any person may occur within a year.

Art. 45.—Contracts to Pay the Debt of Another.

(a) What can you say of verbal contracts to pay the debt of another?

ANS. Such a verbal contract is void.

(b) Would a verbal contract of a widow to pay the debt of her deceased husband be valid?

ANS. No, to be enforcible, it must be in writing.

(c) A. met B. and said to him, "Let C. have goods to the amount of $50.00, and if he does not pay for them, I will." Was this a valid contract?

ANS. No, to be enforcible, this statement of A.'s would have to be in writing.

(d) Suppose A. had said, "Let C. have the goods and charge them to my account." Would this need to be in writing?

ANS. No. A. would have been bound whether the contract was oral or written, because it was his debt.

Art. 46.—Contracts Made in Consideration of Marriage.

(a) Were A. to say to B. "Will you marry me?" and were B. to reply "I will." Would this constitute a contract?

ANS. It would.

(b) Would it be valid without being in writing?

ANS. Yes, because it is a mutual promise to marry.

(c) Were A. to say to B., "If you will marry me, I will give you $1000.00," and B. were to reply, "I accept your offer," and they should become married, would this constitute a contract?

ANS. Yes.

(d) Could B. compel A. to pay the $1000.00?

ANS. No, not unless the promise to pay money had been made in writing.

Art. 47.—Contracts for the Sale of any Interest in Land.

(a) Can one verbally make a valid agreement to sell land or an interest in land?

ANS. He cannot.

(b) Supposing, however, that part of the purchase price is paid, would the verbal contract then be valid?

ANS. No, it would still be void. The purchase price, or any part of it may be recovered, but nothing more can be done.

Art. 48.—Standing Timber.

Is a verbal contract for the purchase of standing timber valid?

ANS. No, because standing timber is an interest in land; hence, such a contract must be in writing to hold.

Art. 49.—Contracts for the Sale of Personal Property.

(a) Must contracts for the sale of personal property be in writing?

ANS. Beyond a certain valuation, yes; up to that valuation, no.

(b) How must this valuation limitation be ascertained?

ANS. By reference to the statutes of the various states.

(c) By the statutes of a majority of the states verbal contracts for the sale of personal property are valid up to what amount?

ANS. Up to $50.00.

(d) Can you mention some extreme limitations both ways?

ANS. In Delaware it is $25, while in Louisiana it is $500.00. (See Table A., Appendix.)

Art. 50.—Contracts for Services.

(a) Are services property?

ANS. For certain purposes, services are property.

(b) Must contracts for services exceeding the statutory limitation on personal property be in writing to be valid?

ANS. Yes.

(c) To what, then, does the statute of limitation apply?

ANS. To property only, not to services.

(d) Illustrate.

ANS. Turner & Mason, Hiring artist to produce portrait for $150.00. Services, not property, paid for.

Art. 51.—Payment and Delivery.

(a) Are there any conditions under which contracts for the sale of personal property need not be in writing?

ANS. (1) Yes, if part of the purchase price is paid, the payment will bind the bargain, even though oral.

(2) In like manner, delivery and acceptance of a part of the property bought will bind the bargain, though it be verbal.

(b) Illustrate.

ANS. Gilbert v. Lichtenberg, Selling car-load of onions and delivering.

Art. 52.—Putting the Contract Into Writing.

(a) How about the form required for written contracts?

ANS. The Statute of Frauds in most states merely requires that "Some memorandum of the contract shall be made in writing, signed by the party to be charged." No special form is necessary.

(b) For whose protection is this law intended?

ANS. All who transact business.

(c) Why need of such protection?

ANS. Many who transact business are unskilled in drafting legal documents, therefore the statute asks nothing more formal than a simple record which any intelligent person should be able to prepare.

(d) What may such memorandum consist of?

ANS. The memorandum may consist of signed orders, or of letters, or of telegrams, or of all or any of these.

(e) What one thing, however, is demanded in any one of these forms?

ANS. The writing or writings embodying the contract must set forth the essential terms of the agreement so that the intent of the parties may be fully gathered therefrom.

(f) May the memorandum be supplemented by verbal explanations?

ANS. It cannot.

Art. 53.—Contents of Memorandum.

Name six points which, while not always necessary, it is at least safest that the memorandum should show.

ANS. (1) Date of making.

(2) Date of performance.

(3) Names of both parties.

(4) Accurate description of property sold or thing to be done.

(5) Consideration.

(6) Signatures of both parties affixed by themselves or by their authorized agents.

Art. 54.—Signing the Memorandum.

(a) By whom must the memorandum be signed?

ANS. The Statute of Frauds requires the memorandum in writing to be signed by the party to be charged.

(b) In case but one party is charged is it necessary that both parties sign?

ANS. It is not.

(c) In this case, against whom is the memorandum binding?

ANS. The agreement will be enforcible against the party who signs, and not against the one who does not sign.

(d) From this, what is evident?

ANS. It is evident that each party should require a complete and valid memorandum in some form, signed by the opposite party.

(e) What should be required when an important verbal order is taken?

ANS. Its written confirmation should be required.

(f) Need anything of this kind be done when an important verbal contract is given?

ANS. Yes, its written acceptance should be obtained.

Art. 55.—Signing by Agent.

(a) How may such memorandum be signed?

ANS. By the parties in person, or by an agent.

(b) In case signing is done by an agent, how should the agent sign?

ANS. Suppose Mr. F. B. Bellis to be the principal, and Mr. Ross C. Childs his agent, in a certain agreement with me, he should sign the agreement thus: *F. B. Bellis,*

by Ross C. Childs, his agent.

(c) By the statutes of most states, what authority must an agent have to enable him lawfully to execute contracts relating to land?

ANS. In most states written authority is required.

(d) For what is verbal authority usually sufficient?

ANS. To enable an agent to execute all contracts other than those relating to land.

COMPETENCY OF PARTIES.

Art. 56.—Incompetent Parties.

Name four classes of persons, by whom contracts made are usually void or voidable.

ANS. (1) Infants.
(2) Lunatics and drunken persons.
(3) Persons under duress.
(4) Married women.

Art. 57.—Infants.

(a) What is an infant, in the eyes of the law?

ANS. Legally considered, an infant is a person under the age of twenty-one years.

(b) What is said of the legality of contracts made by infants?

ANS. Contracts made by infants (except for necessaries) are voidable at the option of the infant.

(c) What does the law presume regarding infants?

ANS. That one who has not reached the age of majority, is too inexperienced to be able to deal safely.

(d) What, therefore, does the law say, in effect?

ANS. "Those who deal with an infant must do so at their own peril."

(e) If the infant is satisfied with the bargain what will be the case?

ANS. If the infant desires to enforce the contract, he may.

(f) If the infant is dissatisfied?

ANS. He may repudiate the contract, and the courts must sustain him in so doing.

(g) Would the last above principle hold true if the agreement was known to be perfectly fair and clearly beneficial to the infants interests?

ANS. The principle still holds. The infant could not be held, unless the contract were for the actual necessities of life.

Art. 58.—Necessaries.

(a) To what extent may an infant bind himself.

ANS. An infant may bind himself upon a contract for necessaries, to the same extent as though he were of age.

(b) Why is this so?

ANS. Were this not so, a friendless infant might suffer, or even perish, for want of ability to contract for food, clothing and shelter.

Art. 59.—Disaffirmance.

(a) When a person attains the age of twenty-one years, is he bound by the contracts he has made during infancy?

ANS. The courts of some states say, "Yes, he is bound by his contracts made during infancy, unless, upon attaining majority he disaffirms them within a reasonable time." The courts of other states say, "No, he is not bound by his contracts during infancy, unless upon attaining his majority, he ratifies them."

(b) What becomes necessary because of this conflict of opinions?

ANS. To refer to the law as it exists in one's own state.

Art. 60.—Return of Property.

(a) What must one do who seeks to disaffirm a contract on the ground that he was an infant when he made it?

ANS. He must return so much of the consideration received by him as remained in his hands upon attainment of his majority.

(b) What can he not do?

ANS. He cannot both keep the property and disaffirm the contract.

(c) What, then, does retention of the property amount to?

ANS. A ratification of the contract.

(d) What is the case after attaining majority, in case an infant, while such, disposes of property bought?

ANS. He is not obliged to return either the property or its value.

Art. 61.—Fraud of Infant.

(a) What will be the case if an infant represents that he is of full age, and obtains contractual benefits thereby, and afterwards avoids the contract on the ground of infancy?

ANS. He may be held liable for his fraud which is known as Fraud of Infancy.

(b) Illustrate.

ANS. Burley & Russell 10 N. H. 184, An infant, representing limit of age, gave note for goods, not necessaries, and afterward tried to avoid payment of note on ground of infancy. Infant was sued, and damages received.

Art. 62.—Lunatics and Drunken Persons.

(a) How is drunkenness regarded by law?

ANS. As temporary lunacy.

(b) How do intoxicated persons and lunatics compare as to their ability to contract?

ANS. They are under like contractual disability.

(c) What is the general rule regarding the contracts of either drunken persons or lunatics?

ANS. The general rule is that the contract of either is voidable at his option, provided that, at the time of the transaction he was incapable

of understanding the meaning and effect of his act, and provided that his condition was known to the person who dealt with him.

(d) If the last named condition were not true, if the partially intoxicated person realized what he was doing, or the person he was dealing with did not know his condition, then what?

ANS. The contract will be valid.

Art. 63.—Bad Faith.

(a) When a contract is made with a weak-minded person, a lunatic, or a drunken person, under circumstances showing bad faith on the part of the other person, what is usually done?

ANS. The contract will generally be set aside?

(b) Will contracts made with persons whose mental powers have been impaired by sickness or old age come under the above ruling?

ANS. Yes, if the circumstances indicate any degree of bad faith. Such contracts are frequently set aside by the courts.

(c) Illustrate a case under "Bad Faith."

ANS. If A. were to induce B. to become intoxicated, and were then to make a contract with B. to B.'s great disadvantage, the contract would be voidable at B.'s option.

Art. 64.—Necessaries.

(a) Can there be any contracts made with lunatics or drunken persons which are valid?

ANS. Yes, contracts for necessaries supplied them in good faith are valid.

(c) What constitutes some of the necessaries?

ANS. Money, board, lodging, food, medicine and education.

(d) How about things for ornament or pleasure?

ANS. Those things which are merely for ornament or pleasure are onecessaries.

(e) If it can be shown that the thing furnished was useful and was in the nature of a necessary, will not this be sufficient?

ANS. No, the contract will not be sustained unless the thing furnished was, in point of fact, necessary to the infant at the time it was supplied.

(f) How about supplying the necessaries to an infant who has parents or a guardian?

ANS. In such a contract, the infant will not be held bound.

Art. 65.—Lunatics Under Guardianship.

What can you say regarding the validity of contracts of a lunatic made while under guardianship?

ANS. Except for necessaries, they are void.

Art. 66.—Duress.

(a) What is meant by the term, "Duress?"

ANS. Duress is compulsion by acts or threats giving rise to fear of serious injury.

(b) Are contracts valid when made under duress?

ANS. They are voidable at the option of the party injured.

(c) Can there be a contract without an agreement?

ANS. No, there can not be.

(d) When does an agreement occur?

ANS. When the minds of the contracting parties meet upon an identical purpose.

(e) Can there be such a meeting of minds when one of the parties is deprived of the free use of his will by great fear of imprisonment or bodily injury?

ANS. There certainly cannot.

(f) To what conclusion, then, does this line of reasoning bring us?

ANS. That no contract under duress can be valid.

Art. 67.—Contracts of Married Women.

(a) Under the common law can a married woman make contracts?

ANS. No.

(b) What, then, is the nature of her right to make contracts?

ANS. It is a statutory right.

(c) Has an unmarried woman the right to make contracts?

ANS. An unmarried woman possesses the same contractual powers as a man.

(d) What is the case when the husband of a married woman dies?

ANS. Her power to make contracts is thereby immediately revived.

(e) Would the same be true if the marriage relation was terminated in any other way?

ANS. The same would be true.

(f) What provision is made by the statutes of nearly all the states regarding a married woman's right to conduct business in her own name?

ANS. A married woman may conduct any business in her own name and may make binding contracts in relation thereto.

(g) How about a married woman's right to become surety for another?

ANS. Many of the statutes deny her this right or the right to bind herself by any contract not relating to her separate and individual property.

Art. 68.—Necessaries.

(a) May a married woman bind her husband's credit?

ANS. Yes, for necessaries.

(b) By what reason is this?

ANS. By reason of the husband's legal obligation to support his wife.

(c) In case the husband can show that the wife is already reasonably provided, can she then bind his credit further?

ANS. She cannot.

CONSIDERATION.

Art. 69.—The Meaning of Consideration.

(a) Define Consideration.

ANS. The thing given by each party to the other as the inducement for the contract, is called Consideration.

(b) Illustrate.

ANS. A. bought a horse from B. for $300.00. The consideration moving to A. was the horse. The consideration moving to B. was the $300.00.

Art. 70.—Absence of Consideration.

(a) What can you say of a contract to give something for nothing?

ANS. Such a contract is void.

(b) What, then, is the foundation of a contract?

ANS. The foundation of a contract is the consideration. Without it, the contract must fall.

Art. 71.—Good Consideration.

Name four things held to be good considerations.

ANS. (1) Money and things of value.
(2) Mutual promises.
(3) Acts and forbearances.
(4) Natural love and affection.

Art. 72.—Money and Things of Value.

(a) What is the commonest form of consideration?

ANS. The exchange of value for value.

(b) Must the values be commensurate?

ANS. The values need not be commensurate.

(c) Will the courts inquire into the sufficiency of the values in case of bad faith?

ANS. No, in case of bad faith, the courts will not inquire into the adequacy of the consideration, but will leave the parties where they have placed themselves by their own bargain.

Art. 73.—Mutual Promises.

What class of consideration are mutual promises considered to be?

ANS. Mutual promises creating reciprocal obligations form a good consideration.

Art. 74.—Acts and Forbearances.

(a) Will acts and forbearances form a consideration?

ANS. They will, and do.

(b) What class of consideration do they constitute?

ANS. An act or a forbearance is a good consideration.

Art. 75.—Natural Love and Affection.

(a) Name three classes of natural love and affection which will be considered good consideration

ANS. (1) Blood relationship.
(2) Natural love and affection.
(3) Natural duty.

(b) Will a deed conveying real estate from parent to child in consideration of love and affection hold good?

ANS. Such conveyances are valid.

Art. 76.—Valuable Consideration.

(a) When is a consideration said to be "valuable?"

ANS. When it consists of money or of something convertible into money.

(b) Does the law name anything else as a valuable consideration?

ANS. Yes, marriage is also a valuable consideration.

(c) As between the parties to a transaction, what consideration is sufficient?

ANS. A *good* consideration is sufficient.

(d) What class of consideration is necessary to support the transaction as against the adverse interests of creditors?

ANS. The consideration must be both *good* and *valuable*.

CERTAINTY AND LEGALITY OF OBJECT.

Art. 77.—Certainty.

(a) What must be true of its essential provisions, to render a contract enforcible?

ANS. It must be certain in its essential provisions.

(b) May the courts make agreements for the parties?

ANS. Courts cannot make agreements for the parties.

(c) May the courts render certain that which the parties have left in doubt?

ANS. No, they cannot.

Art. 78.—Illegal Contracts.

Name two classes of void contracts.

ANS. (1) Contracts in violation of law.
(2) Contracts contrary to public policy.

Art. 79.—Contracts in Violation of Law.

(a) For what do courts exist?

ANS. To enforce the law and not to aid in its violation.

(b) What naturally follows?

ANS. It follows that when the object of a contract is unlawful, enforcement of the contract is impossible. The contract is therefore void.

Art. 80.—Contracts Contrary to Public Policy.

(a) What does the law seek to secure?

ANS. The greatest good to the greatest number.

(b) What naturally follows?

ANS. The interests of the few must yield to the rights of the many.

(c) In what way will the courts not assist a private individual?

ANS. The courts will not assist a private individual to work a public injury.

(d) What follows this principle?

ANS. It follows that a contract contravening public welfare is void.

Art. 81.—Illegal Contracts.

(a) Name seven classes of contracts held void by the statutes of most states.

ANS. (1) Contracts in restraint of trade.
(2) Contracts for the purpose of stifling competition.
(3) Contracts to influence public officials.
(4) Gambling contracts.
(5) Marriage brokerage contracts.
(6) Usurious contracts.
(7) Contracts for immoral purposes.

Art. 82.—Contracts in Restraint of Trade.

(a) Is restriction of trade in any degree ever valid?

ANS. A restriction of trade which is not sufficiently sweeping to injure public interest is valid.

(b) Give an example of such a case.

ANS. When one sells out the good will of a business, it is lawful for him to agree to refrain from re-entering business in competition with the purchaser, to the detriment of the good will sold.

(c) When, then, will contracts in restraint of trade be void?

ANS. (1) When a contract restrains trade generally;
(2) Or, in an unreasonably large territory;
(3) Or, for an unwarrantable length of time; it will be held to be contrary to public policy, and, therefore, void.

Art. 83.—Contracts Stifling Competition.

Name some conditions which stifle competition and which would be declared void by the courts.

ANS. (1) Agreements made for throttling competition.
(2) Agreements limiting production.
(3) Agreements increasing prices.

Art. 84.—Contracts to Influence Public Officials.

Name three kinds of contracts declared under this head to be void.

ANS. (1) Contracts to render lobbying service.
(2) Contracts to influence public officials by indirect or underhanded means.
(3) Contracts for a fee contingent upon certain legislation being enacted.

Art. 85.—Gambling Contracts.

(a) What is a wager?

ANS. An agreement to pay upon the happening of an uncertain event.

(b) What is said of the morality of wagering?

ANS. Wagers are in violation of sound morals.

(c) What, then, can you say of wagering or gambling contracts?

ANS. Wagering or gambling contracts are held void by nearly every state in the union.

(d) When may one who has deposited money with a stake-holder demand to have his money returned?

ANS. At any time before it has been paid to the winner.

(e) May this be done either before or after the bet has been decided?

ANS. It may.

(f) What will be the result if the stake-holder refuses to give back the money on demand?

ANS. The stake-holder becomes personally liable for it to the depositor.

Art. 86.—Marriage Brokerage.

What can you say of a contract to procure a wife, or a husband, for another?

ANS. Such a contract is contrary to public policy and to sound morals, and is, therefore, void.

Art. 87.—Usurious Contracts.

(a) How are interest rates regulated by the statutes of most states?

ANS. The maximum rate of interest that may be charged, also the legal rate of interest, are fixed by statute in most of the states of the Union.

(b) What is meant by usury?

ANS. When a contract, directly or indirectly, requires payment of a return to the lender or his agent, exceeding the maximum rate allowed by law, it is said to be usurious.

(c) What decides the penalty for usury?

ANS. The statutes of the state in which the usury is committed.

(d) What is it in our state? (See appendix, Table C.)

Art. 88.—Contracts for Immoral Purposes.

What will the courts do toward enforcing contracts for immoral purposes?

ANS. Nothing.

CONSTRUCTION OF CONTRACTS.

Art. 89.—Words.

(a) What is the meaning of the term Construction as used in connection with contracts?

ANS. The act of ascertaining the intent (finding out the meaning) of the parties from the worded expressions they have used, is called construction.

(b) In construing a contract, what meaning is to be given to common and what to technical words?

ANS. Common words are to be given their plain, obvious and ordinary meaning. Technical words and trade terms are to be given their special significance, unless a different intent is evident from the instrument itself.

(c) In the construction of contracts, against whom are words most strongly construed?

ANS. Against the party using them.

(d) Why should this be true?

ANS. Because it is presumed that he has used language as favorable as possible to himself.

Art. 90.—Clerical Errors.

What is the policy of law toward clerical errors?

ANS. The law supplies omissions caused by errors that are plainly clerical.

91.—Double Construction.

When a contract is capable of two constructions, which one will be chosen?

ANS. The one which will make it operative will be chosen in preference to the one which will make it inoperative.

Art. 92.—Satisfaction.

When it is contracted that a certain thing shall be to the satisfaction of another, as, for example, that certain machinery shall work to the satisfaction of the purchaser, who is to be the judge?

ANS. The person whose opinion is to be thus consulted is the sole judge of whether or not he is satisfied. If dissatisfied he may cancel the contract.

Art. 93.—Negative Contracts.

What power have the courts regarding a contract which provides that one of the parties to it shall not do a certain thing?

ANS. The breach of such a contract may be enjoined by the courts.

Art. 94.—Reasonable Time.

When an act is promised to be done, and no time of performance is set, what will the law say about it?

ANS. That the act is to be done within a reasonable time.

Art. 95.—Contracts Partly Written and Partly Printed.

When a part of a contract is written in words and part is a printed form, and the written words are in conflict with the printed portion, what will control?

ANS. In such case, the written words will control.

Art. 96.—Writing Not Varied by Parol.

When a contract has been reduced to writing and executed by the parties, what effect has this upon any previous verbal understanding?

ANS. All preliminary understandings and agreements are merged in the written agreement. To all intents and purposes, the preliminary verbal agreements cease to exist.

Art. 97.—The Law of Place.

(a) What is the general rule as to when a contract is valid?

ANS. As a general rule, a contract valid where made, is valid everywhere, and a contract invalid where made, is invalid everywhere.

(b) What is the case when a contract is made in one state or country to be performed in another?

ANS. In such case the law of the place of performance governs the contract, unless the parties have agreed otherwise.

(c) What is the case when the contract is both made and to be performed in one and the same state?

ANS. The law of the place where the contract is made governs.

TERMINATION OF CONTRACTS.

Art. 98.—How Contracts are Terminated.

Give six ways in which contracts are commonly terminated..

ANS. (1) Performance.
(2) Substitution.
(3) Cancellation.
(4) Rescission.
(5) Breach.
(6) Limitation.

Art. 99.—Performance.

When is a contract terminated by performance?

ANS. When both parties have performed all that they have agreed upon, the contract is at an end.

Art. 100.—Impossibility of Performance.

(a) What will be the case if performance becomes impossible by reason of the destruction of the subject matter of the contract, or by reason of the death of one or more of the parties?

ANS. The performance will be excused.

(b) Is there ever a case when performance is impossible, yet not excused?

ANS. Yes. In case the impossibility arose from a cause which the parties should have provided against in their contract, the performance will not be excused.

Art. 101.—Substitution.

(a) How may a new contract be made to wholly take the place of the original agreement?

ANS. By mutual consent of the parties thereto.

(b) When this is done, what becomes of the old contract?

ANS. It is terminated, and the new one is in force.

(c) Is a new consideration required to support the new contract?

ANS. It is not.

Art. 102.—Cancellation.

(a) What else may be done by mutual consent?

ANS. The parties may cancel the contract.

(b) How may this always be done?

ANS. Always in writing.

(c) May a written agreement ever be changed by an oral one?

ANS. Yes, a written contract may be changed or cancelled by an oral agreement to that effect, afterwards, except when the contract is of a class required by the law to be in writing.

Art. 103.—Rescission.

(a) What is the action termed Rescission?

ANS. The act of disaffirmance is called rescission.

(b) When is a contract subject to rescission?

ANS. A contract is voidable, hence subject to rescission, when one or more parties to it have the right to either treat it as binding, or to disaffirm and repudiate it at pleasure. This act of disaffirmance is called Rescission.

(c) Illustrate.

ANS. (1). The voidable contracts with a minor and an adult may

be either enforced against the adult or repudiated by the infant, as the infant chooses.

(2) Contracts made under duress, and the voidable contracts of married women, lunatics, and drunken persons may be rescinded.

(3) Contracts in which the opposite party has defaulted may be rescinded.

(4) Contracts induced by fraud, false representations, and mutual mistake of facts are subject to rescission.

Art. 104.—Fraud.

What is fraud as applied to contracts?

The intentional and successful employment of any cunning deception, or artifice used to circumvent or cheat another is fraud.

Art. 105.—False Representations.

When is false representation sufficient ground for the rescission of a contract?

ANS. False representation of a material fact, made with knowledge of its falsity, or with reckless abandon as to whether it be true or false and which is intended to mislead, is sufficient ground for the rescission of a contract.

Art. 106.—Opinion.

(a) Will the expression of an opinion afford sufficient ground for the rescission of a contract?

ANS. Where both parties are in an equal position to judge, and where each relies upon his own judgment, it will not.

(b) Suggest an example.

ANS. Mere trade talk by one who extolled the value of the property he had for sale, where both parties are equally able to judge, is not ground for rescission, even though untrue.

Art. 107.—Expert Opinion.

(a) What is meant by the term Expert Opinion?

ANS. It is the special and unusual knowledge of a certain subject possessed by one who has made a special study of that subject.

(b) Does the expression of such an opinion ever afford sufficient ground for the rescission of a contract?

ANS. It does, if the expression is false and the other party has not a like ability and opportunity to judge the matter.

Art. 108.—Mistake.

(a) When will a mistake afford ground for rescission of contract?

ANS. When the mistake is on an essential fact and arises from a studied suppression of facts by one side, or by a mistake of facts on both sides.

(b) May contracts be rescinded on account of a mistake of law?

ANS. They cannot. Everyone is presumed to know the law.

Art. 109.—Mutual Mistake.

(a) What is understood here by the term Mutual Mistake?

ANS. When both parties to a contract are in error as to the subject matter of the contract, it constitutes a mutual mistake.

(b) Will such mutual mistake afford ground for rescission?

ANS. It will.

Art. 110.—Breach of Contract.

(a) What is meant by a Breach of Contract?

ANS. It is a violation of a binding contract.

(b) What is the remedy for breach of contract?

ANS The innocent injured party is entitled to reimbursement for the loss occasioned by such violation.

Art. 111.—Breach of Implied Contract.

May damages be recovered for breach of implied contract?

ANS. Yes, as well as for breach of an express contract.

Art. 112.—Inducing Persons to Break Contract.

(a) Can action be maintained for inducing another to break his contract?

ANS. In general, no action can be maintained..

(b) In what does the remedy consist?

ANS. In the injured party bringing suit against the opposite party for breach.

Art. 113.—Limitation.

(a) Give two ways in which contracts may be ended by limitation.

ANS. (1) By a limitation contained in the contract itself.

(2) By limitation of law.

(b) Illustrate each.

ANS. (1) If A. were to lease a house from B. for a term of three years, the lease contract would terminate by its own limitation at the end of that period.

(2) This occurs when either party to a contract refuses or neglects to recognize a liability upon it for a period of time fixed by law.

DEFENSES AGAINST CONTRACTS

Art. 114.—Defenses.

(a) When one is called upon to perform a contract, for how many reasons may he refuse compliance?

ANS. There may be one or more of sixteen distinct reasons for non-compliance.

(b) Name them.

ANS. (1) Want of agreement.
(2) Want of proper form.
(3) Want of competent parties.
(4) Want of consideration.
(5) Want of certainty.
(6) Want of legal object.
(7) Performance.
(8) Impossibility of performance.
(9) Substitution.
(10) Mutual cancellation.
(11) Rescission.
(12) Merger.
(13) Alteration.
(14) Forgery.
(15) Bankruptcy.
(16) The Statute of Limitations.

Art. 115.—Merger.

(a) What is meant by Merger?

ANS. It means the losing of the lesser in the greater.

(b) Explain this more fully.

ANS. Conversations, verbal agreements, and even written negotiations, leading up to a formal written contract are said to be merged in the final written agreement.

(c) If, then, there has been a verbal contract, and afterwards a written contract is made intended to cover the same subject, can suit be sustained on the verbal contract?

ANS. No, it is merged in the written contract.

Art. 116.—Alteration.

(a) What will be the effect if the obligee changes a contract?

ANS. The obligor is thereby released from the contract.

(b) Would this be true if the change made by the obligee were in favor of the obligor?

ANS. Yes, just the same.

(c) If the conditions were changed and the obligor made the change in the contract, would the same rule hold?

ANS. Yes, any change by either party to a contract without the knowledge and consent of the other party, absolutely annuls the contract.

(d) How about changes made by consent of both parties to the contract?

ANS. Alteration made by consent of all parties to an agreement, is valid and does not impair the contract.

Art. 117.—Forgery.

(a) Of what does forgery consist?

ANS. Forgery includes both making and altering instruments falsely with intent to deceive.

(b) What may be forged?

ANS. Any writing may be forged.

(c) Is the crime confined to any particular part of the document?

ANS. It is not. A material change in any part of the instrument constitutes forgery.

(d) What then, may be said of all forged instruments?

ANS. All are void.

Art. 118.—Discharge in Bankruptcy.

What is the effect of a discharge in bankruptcy?

ANS. One who has been discharged in bankruptcy is released from all debts and contractual obligations embraced in the bankruptcy proceedings.

Art. 119.—Statute of Limitations.

(a) What is the prime object of the statute of limitations?

ANS. To avoid the annoyance and injustice arising through suits upon state claims.

(b) When this time has expired, what terms may be applied to the contract thus limited?

ANS. The expired obligation is said to be "barred by limitation," or, in popular language, "outlawed."

(c) How may an action brought upon an outlawed claim be defeated?

ANS. By proof that suit has not been commenced within the time provided by law.

(d) What is the period of limitation?

ANS. It differs in the several states, hence must be determined by reference to the statutes of the particular state.

GENERAL EXAMINATION NO. 2.

Embracing the subject of Contracts, their Formation, Interpretation, and Termination, treated in Articles 27 to 119 inclusive appearing in Practical Law. Answers to the following questions should be neatly written and handed to the teacher. Number each answer to correspond with the question. Write your name and the current date on each sheet. Mark your paper Examination No. 2. Write only on one side of the sheet, and avoid erasures, blots, check marks, or other disfigurements.

1. What is a contract?
2. What does the law of contracts govern?

3. Give three reasons why a clear knowledge of contracts is of especial value to every one.

4. Give three classes of contracts, as to their legality.

5. Name two forms of express contracts, and state the chief advantage of the one form over the other.

6. Give six questions in passing upon the validity of a contract.

7. (a) When does an agreement occur?

(b) Distinguish between the terms agreement and contract.

8. Name and define the different kinds of offers.

9. What must be true of an acceptance to make it effectual?

10. Explain fully and clearly the difference between the terms Revocation and Rescission.

11. (a) When may an offer be cancelled?

(b) When may an acceptance be cancelled?

(c) When does the cancellation of an offer become effective if made by mail or telegraph?

(d) Tell the same of an acceptance revoked by mail or telegraph.

12. Name five classes of contracts, which, under the "Statute of Frauds" of most states, are required to be in writing.

13. (a) Name six points, which, while not always absolutely necessary, it is at least safest that memoranda of a contract should show.

(b) Illustrate how signing should be done by an agent.

14. (a) Name four classes of parties by whom contracts made are usually void or voidable.

(b) May an infant make a contract which will not be voidable, and, if so, under what conditions?

15. What is known as "Fraud of Infancy?"

16. How is drunkenness regarded by the law?

17. Define and give example of each of the following:

(a) Bad faith.
(b) Duress.
(c) Restraint of trade.
(d) Stifling competition
(e) Usury.
(f) Legal rate.
(g) Maximum rate
(h) Construction.
(i) Satisfaction.
(j) Parol.

18. (a) Name four things which will constitute "Good Consideration."

(b) Define and illustrate "Valuable Consideration."

19. Name two classes of void contracts.

20 Distinguish between technical and common words, and state how each are construed in law.

21. Show the distinction between "Common Opinion" and "Expert Opinion"

22. What is a "Negative Contract," and by what means is it enforced?

23. Give six ways in which contracts may be terminated.

24. Give sixteen reasons, for any of which, one may refuse compliance with the terms.

25. Define and explain the purpose of Statute of Limitation.

PRINCIPAL AND AGENT.

Art. 120.—The Relation.

(a) Who is an Agent?

ANS. One who acts instead of another, with authority to do so.

(b) Who is the Principal?

ANS. One by whose authority the agent acts.

Art. 121.—Kinds of Agents.

(a) How are agents classified as to the scope of their authority?

ANS. Agents are classified as Special Agents and General Agents.

(b) Define special agents.

ANS. A special agent is one whose authority is limited to a single transaction, or to transactions of a narrow and limited nature. Thus an agent to sell and collect is a special agent.

(c) What is a General Agent?

ANS. A general agent is one who has authority to transact all kinds of business relating to an enterprise.

Art. 122.—General Agents.

In how much may a general agent bind his principal?

ANS. A known general agent binds the principal by all transactions performed in relation to the business in which he is engaged and within the scope of his apparent authority.

Art. 123.—Special Agents.

(a) How may a special agent bind his principal?

ANS. A special agent binds his principal only when he acts within the scope of his actual authority.

(b) What protection has the public in the matter?

ANS. Persons who deal with a special agent must ascertain his authority at their own peril.

Art. 124.—Conferment of Authority.

(a) How may authority be conferred upon an agent?

ANS. (1) By words.
(2) By acts.
(3) By failure to act.

(b) What will be the result if one knows that another is assuming to act as his agent, yet makes no objection?

ANS. He cannot successfully deny the authority of the agent when such denial will injure those who have been misled by the supposed principal's silence.

(c) Must authority conferred by words be written?

ANS. Authority may be conferred verbally or in writing.

(d) Will verbal authority be sufficient to authorize the agent to execute a written contract?

ANS. It will be.

(e) Is there any exception to this?

ANS. Yes, authority to execute a deed must be in writing.

(f) What can you say of authority to execute an instrument required by law to be under seal?

ANS. Such authority must itself be under seal.

(g) By what legal form is authority to an agent conferred?

ANS. By the legal form known as a "Power of Attorney."

Art. 125.—Ratification.

(a) What is meant by ratification?

ANS. Adoption of the act of another either expressly or by receiving the benefits of such act, is called ratification.

(b) Ratification is said to be equivalent to what?

ANS. Ratification is equivalent to prior command.

Art. 126.—Authority to Collect.

(a) What does general authority to collect authorize an agent to receive?

ANS. Cash only in payment.

(b) If one pays an agent in something which that agent has no authority to receive, is the debt thereby discharged?

ANS. It is not. If the principal declines to ratify the act of the agent, the debt may be collected again.

Art. 127.—Duty of Agent.

(a) What is the highest duty of an agent?

ANS. Fidelity to his principal.

(b) Can an agent act adversely to his principal's interests?

ANS. He cannot lawfully act against his principal's rightful interests.

(c) Give an example of this principle.

ANS. An agent cannot act as agent for both buyer and seller, except by consent of both parties.

(d) To this statement there is one apparent exception. What is it?

ANS. The case of the middleman, who simply brings the parties together and leaves them to make their own bargains.

(e) May such middleman collect from both parties?

ANS. He may, if both have agreed to pay.

(f) Will this hold true if the agent's employment involves the use of discretion?

ANS. No, he must act for one principal only.

Art. 128.—Liability of Agent.

May an agent so exercise his power as to bind himself?

ANS. He may, in three ways, as follows:

(1) When he acts for an undisclosed principal.
(2) When he expressly pledges his own credit.
(3) When he does an illegal act.

Art. 129.—Signature of Agent.

(a) Will such a signature as "John Rice, Agent," be held to bind the principal and the principal only?

ANS. The word "agent" after the signature is merely discriptive, and unless it appears from the body of the instrument that the agent intended to bind the principal and not himself, such a signature would, in most cases, be held to bind the agent only.

(b) Does any mere description of himself limit a person's liability?

ANS. Not at all.

(c) How should an agent's signature appear, to positively bind the principal, and the principal only?

ANS. The agent should sign in the following form:

John Smith,
By Henry Brown,
his agent.

Art. 130.—Termination of Agency.

In how many ways may an agency be terminated?

ANS. In any one or more of five ways, as follows:

(1) By limitation.
(2) By revocation.
(3) Insanity.
(4) By bankruptcy.
(5) By death.

Art. 131.—Termination by Limitation.

When is a special agency terminated?

ANS. (1) When the special thing to be done has been done, the agency is at an end.

(2) When the agency is for a fixed time and the time has expired, the agency is likewise terminated.

Art. 132.—Termination by Revocation.

(a) In general, what power or right has the principal to revoke the agent's authority?

ANS. The principal may revoke the agent's authority at will.

(b) Is there any exception to this rule?

ANS. There is an important exception to this rule, viz., an agency coupled with a pecuniary interest on the part of the agent in the subject of the agency cannot be revoked without extinguishing the interest.

Art. 133.—Termination by Insanity.

When does insanity terminate an agency?

ANS. When officially determined.

Art. 134.—Termination by Bankruptcy.

What effect has the bankruptcy of the principal?

ANS. Terminates all pre-existing agencies.

Art. 135.—Termination by Death.

What effect does the death of either the principal or the agent, necessarily have?

ANS. Instantly terminates the agency.

Art. 136.—Disregard of Instructions.

(a) What is the result when an agent disregards positive instructions?

ANS. He will be personally liable to his principal for any loss resulting therefrom.

(b) What will be the case should profit result from such disregard of instructions?

ANS. Such profit belongs to the principal.

PARTNERSHIP.

Art. 137.—The Relation.

(a) What class of business may be carried on by means of a partnership?

ANS. Any lawful business.

(b) When is a partnership said to exist?

ANS. When two or more persons combine their property, labor, or skill in the transaction of business for mutual profit.

(c) Is the bearing of losses a common incident in connection with partnership?

ANS. It is, but not essential to the partnership relation.

(d) Do all the partners always participate in the losses?

ANS. Not necessarily. The partners may agree among themselves that one or more of their numbers shall not participate in loss.

(e) How will such an agreement effect the partner's liability to creditors?

ANS. It will not prevent such partners being liable to creditors for partnership debts.

Art. 138.—Classes of Partners.

(a) How many distinct classes of partners are there?

ANS. Partners are of four classes, as follows:

(1) Actual, (real members).
(2) Ostensible, (apparent members).
(3) Nominal, (persons lending their names).
(4) Dormant or silent, (persons having a concealed interest).

(b) May a dormant or silent partner he held liable by the public for partnership debts?

ANS. Yes, to the same extent as any other member, if he is discovered.

Art. 139.—Creation of Partnership.

(a) As among themselves, how must the partnership relation arise?

ANS. From expressed or implied contract.

(b) As to third parties, (i. e., "outsiders"), what is the case in this regard?

ANS. Third parties may often hold an apparent partner to a partnership liability when no partnership was contracted for or intended.

Art. 140.—Kinds of Partnership.

(a) How are partnerships classified as to their purposes?

ANS. Partnerships are either trading or non-trading.

(b) How are they readily distinguished?

ANS. If the business of the partnership is to buy and sell for profit, it is a trading partnership.

(c) Give an example of each.

ANS. (1) Trading, buying and selling produce.
(2) Non-trading, farming and raising crops.

Art. 141.—Trading Partnerships.

(a) What may be said of each partner in a trading partnership?

ANS. Each partner is the general agent of all the other partners in the transaction of firm business.

(b) May the authority of the partners of a trading partnership be limited?

ANS. As among themselves, the partners may limit their authority by contract, but as to third parties, having no knowledge of such limitation, the authority of each partner to bind every member of the firm is absolute.

Art. 142.—Firm Bound, Through Funds Misappropriated.

Is a trading firm bound by the acts of a partner who borrows and misappropriates funds?

ANS. If a partner in a trading firm borrows any money *apparently* for the firm, it is immaterial that he afterwards misappropriates its use. The firm will be bound by the obligation.

Art. 143.—Non-Trading Partnerships.

(a) When can a member of a non-trading partnership bind the firm?

ANS. Only when he has expressed or implied authority so to do.

(b) Explain this more fully.

ANS. If a member of a law firm, or any other non-trading partnership, were to offer for discount a note signed in the firm name, the person taking such note must ascertain, at his own peril, the partner's authority to sign it.

(c) What would be the case, should such authority prove not to exist?

ANS. The partner, or partners, participating in the transaction or ratifying it, and no others, can be held liable.

Art. 144.—Good Faith.

(a) Can a partner act as the agent of the firm in making a contract with himself?

ANS. He cannot.

(b) Cite an example.

ANS. A partner has no authority to loan himself the firm's money.

Art. 145.—Suits by Partners.

(a) May a partner bring suit at law against his co-partners upon obligations arising in the course of the firm's business?

ANS. In general, a partner cannot do so.

(b) Why is this true?

ANS. The reason is, that one person cannot be both plaintiff and defendant in the same suit. For one to sue a partnership of which he is a member would be, in effect, the bringing of a suit against himself.

(c) What, then, is a partner's remedy in case he has been unfairly dealt with?

ANS. His only remedy is to go into a court of equity and ask for an accounting.

Art. 146.—Sharing Profits and Losses.

(a) In the absence of any agreement to the contrary, how must partners share the partnership losses and gains?

ANS. As among themselves, in the absence of an agreement to the contrary, partners must share the gains and bear the losses equally and without advantage to one partner over another.

(b) Have the partners a right to agree upon any other basis of division, as they may see fit?

ANS. They have, as among themselves, and the agreement will be valid.

(c) How will such an agreement among the partners effect the rights of the public in collection from the individual partners of the obligations of the firm?

ANS. These agreements among the partners have no effect whatever as to the rights of third parties. Outside parties may still hold any one partner for the whole obligation of the firm.

Art. 147.—Compensation.

(a) What can you say regarding compensation to partners for services rendered the firm?

ANS. In the absence of an agreement to the contrary, partners are not entitled to compensation for such services.

(b) What will be the case if a partner falls sick?

ANS. If a partner falls sick, the other members of the firm must carry on the business without increased compensation. Each partner is entitled to his share of the profits, and to nothing more.

(c) In case of the death of a partner, can the other partners exact compensation for their services in closing up the firm's affairs?

ANS. They cannot.

Art. 148.—Dissolution.

(a) In how many ways may a partnership be dissolved?

ANS. In any one of four ways, as follows:

(1) By mutual consent.

(2) By withdrawal of one of the partners through the sale of his interest in the concern.

(3) By the bankruptcy of one of the partners.

(4) By the death of a partner.

(b) When may dissolution be decreed by a court?

ANS. (1) When any partner becomes incapacitated by insanity, imprisonment, or other causes of more than a temporary nature.

(2) For fraud on the part of one or more members of the firm.

Art. 149.—Notice of Dissolution.

(a) When a firm has been dissolved, to whom should notice of dissolution be given?

ANS. Due notice should be given to all persons with whom the firm has dealings.

(b) Why should this be closely observed?

ANS. Because, while the dissolution revokes the agency of each member to bind the personal credit of the others, this revocation does not operate against third parties who extend credit to the continuing partners without knowledge of the dissolution.

THE EMPLOYMENT OF LABOR.

Art. 150.—The Relation.

(a) By what legal terms are the employer of labor and the employee known?

ANS. The employer is known as the Master; the employee is known as the Servant.

(b) From what must this relation result?

ANS. By contract, either express or implied.

(c) What can you say of recovering compensation for voluntary services?

ANS. No compensation can be recovered for voluntary services rendered under circumstances which fail to show a mutual expectation that payment is to be made.

Art. 151.—Duty of Master.

What is the master's duty?

ANS. The master's duty is four-fold, as follows:

(1) To provide the servant with reasonably safe premises and appliances.

(2) To warn the servant of extraordinary dangers known to the master.

(3) To use reasonable care in selecting safe fellow-servants.

(4) To pay the servant his wages as per contract.

Art. 152.—Safe Premises.

What is the result of the master's failure to provide reasonably safe premises?

ANS It renders the master liable to the servant for any resulting damages.

Art. 153.—Safe Appliances.

(a) Must the master furnish the safest known appliances?

ANS. The master is not bound to furnish his servant with the safest known appliances, but the appliances furnished must be reasonably safe.

(b) What will be the result if the appliances furnished by the master are not reasonably safe?

ANS. The master will be liable for the resulting damages.

Art. 154.—Warning of Extraordinary Danger.

(a) For what reasons may danger be considered extraordinary?

ANS. (1) By reason of the nature of the employment.

(2) Because of the youth or inexperience of the employee.

(b) What is the master's duty in such cases?

ANS. To warn his servant. If he fails to do so, he will be liable for resulting injuries.

Art. 155.—Care in Selecting Servants.

(a) What is the master's duty regarding this subject?

ANS. The master must exercise reasonable care in furnishing his servants with competent fellow-servants.

(b) What if the master fails to do this?

ANS. He will be held liable to his servants for injuries resulting from the negligently-selected fellow-servants' incompetence.

Art. 156.—Assumed Risks.

(a) What risks are the servants bound to assume?

ANS. A servant assumes the ordinary risks incident to the employment in which he engages.

(b) Can the servant recover from his master for damages arising from ordinary dangers of the employment?

ANS. He cannot.

Art. 157.—Negligence of Fellow Servants.

Must the servant assume any risk of negligence on the part of his fellow servants?

ANS. The servant assumes the risk of negligence on the part of his fellow-servants provided the master has selected them with due care.

Art. 158.—Contributory Negligence.

(a) What is meant by contributory negligence?

ANS. Negligence which is, in part at least, the result of the servant's own fault.

(b) Can the master be held liable for injuries received by the servant under such circumstances?

ANS. He cannot.

(c) What will be the case if the master instructs the servant to go into a place of danger, and injury to the servant results?

ANS. Generally, the master cannot escape liability if the servant obeys and is injured.

(d) Is there any exception to this?

ANS. Yes, if the risk was so glaring that an ordinarily prudent man would have disobeyed the order, the master could not be held liable.

Art. 159.—Payment of Servant.

(a) What is the final duty of the master?

ANS. It is to pay the servant according to contract.

(b) What amount can the servant recover in case no amount has been agreed upon?

ANS. The servant will be entitled to recover such an amount as his services are reasonably worth.

(c) When a servant continues to serve after the termination of a definite contract what will be his compensation?

ANS. The servant will, under this condition, continue at the same rate of compensation as originally provided.

(d) Is a servant entitled to extra compensation for extra services rendered in the general line of his employment?

ANS. His regular salary will be presumed to cover such extra services, unless there has been a special agreement by the master to pay additional compensation.

(e) What may result from the failure of the master to pay his servant at the time and in the manner agreed upon?

ANS. Such failure amounts to a breach, for which the servant may declare the contract terminated.

(f) What may then be said of the contract?

ANS. The contract is voidable at the will of the servant, but not by the master.

Art. 160.—Duty of Servant.

What is the duty of the servant?

ANS. To serve faithfully and with sobriety, and to obey all the reasonable commands of the master.

Art. 161.—Discharge.

Name five things for which a servant may be lawfully discharged?

ANS. (1) For such immorality as diminishes the value of his service.
(2) For want of reasonable skill.
(3) For habitual neglect of duty.
(4) For prolonged sickness, but not for mere temporary illness.
(5) For insubordination.

Art. 162.—Wrongful Discharge.

(a) If the master discharges his servant without sufficient cause, what are the servant's remedies?

ANS. The servant has his choice of two remedies, as follows:

(1) He may treat the contract as rescinded and sue for the reasonable value of the services rendered.

(2) He may treat the contract as still in force and recover damage for the breach of it.

(b) In the latter case, what amount is the servant entitled to recover?

ANS. In case the master shows nothing in mitigation of damages, the servant is entitled to recover the whole amount specified in the original contract for the full term of the employment.

(c) What defense may the master have against such a suit as the above?

ANS. The master, in such case may, if he can, show in mitigation of damages that the servant has obtained, or might have obtained by reasonable exertion, other employment in the same line of business in the same locality.

(d) What will the master gain if he succeeds in showing this to be true?

ANS. If this is successfully shown, the amount of damages recoverable by the servant will be reduced by the amount which the servant has received, or might by proper exertion have received, during the period of the breach.

CARRIERS.

Art. 163.—Classes of Carriers

(a) How many kinds of Carriers are there?

ANS. Carriers are of two kinds.

(b) Name them.

ANS. Private carriers and common carriers.

(c) Define each.

ANS. A private carrier is one who undertakes to carry goods for particular customers only, and by special agreement.

A common carrier is one who undertakes to carry for all persons who offer goods and the charges of carriage.

Art. 164.—Liability of Private Carriers.

What is the liability of a private carrier?

ANS. A private carrier is liable for damage or loss of goods intrusted to him for transportation, only when the damage or loss arose through his failure to use ordinary care.

Art. 165.—Liability of Common Carriers.

(a) What is the liability of common carriers?

ANS. When their liability is not qualified by contract or by statute, common carriers are responsible for all loss or damage, during transportation, from any cause whatsoever, except the act of God or the public enemy.

(b) Is this liability often limited?

ANS. This sweeping liability of the common carrier is usually expressly limited, and is often entirely extinguished by the contract between the carrier and the shipper.

Art. 166.—Act of God.

(a) What is meant by the expression "Act of God?"

ANS. The expression "Act of God" means such an irrepressible disaster as results immediately from natural causes and is not attributable to any human agency.

(b) Can a carrier ever be held liable for damage or loss resulting through "Act of God?"

ANS. Never, under any circumstances.

Art. 167.—Loss or Destruction of Goods.

What is the carrier's liability on goods lost in transit?

ANS.—If goods under transportation are lost or destroyed through means which the carrier might have prevented by the exercise of due care, the carrier will, in general, be held liable.

Art. 168.—Loss From Natural Causes.

For what is a common carrier not held liable?

ANS. A common carrier is not liable for loss caused by frost, fermentation, evaporation, or natural decay, or from the natural wear and tear in transportation, provided the carrier exercised reasonable diligence to render the loss as slight as possible.

Art. 169.—Limitation of Liability.

(a) Upon what do all courts agree regarding carriers?

ANS. That a carrier may make a valid stipulation with the shipper that the carrier shall not be held liable for loss or damage to the goods carried, arising without negligence on the part of the carrier.

(b) How do some courts go even further regarding this?

ANS. Some courts even hold that a common carrier may contract for entire immunity from liability.

(c) When is this particularly true?

ANS. When the carrier contracts for some special service out of the ordinary course of his business.

Art. 170.—Loss on Connecting Line.

What stipulation may a carrier make regarding connecting lines?

ANS. A carrier may make a valid stipulation against liability for loss arising on the line of a connecting carrier.

Art. 171.—Liability for its Own Negligence.

Is it generally considered good policy to permit a carrier to contract for immunity against liability arising from its own negligence?

ANS. No, in the absence of special reasons, it is generally held contrary to public policy to permit a carrier to contract for immunity against liability arising from its own negligence or that of its agents or servants. Such contracts are quite generally held void.

Art. 172.—Stipulation as to Value.

What valid stipulation may the carrier make as to value of goods shipped?

ANS. A stipulation that a carrier shall not be held liable for an amount exceeding the valuation placed upon the goods by the shipper, in consideration of which the carrier undertakes to transport the goods at a less rate than would be asked if they had been appraised at a higher value, is valid.

Art. 173.—Rules.

Will rules made by carriers be sustained by the courts?

ANS. Reasonable rules prescribed by common carriers and brought to the attention of shippers will be sustained by the courts.

Art. 174.—The Bill of Lading.

(a) What is a bill of lading?

ANS. A bill of lading is both a receipt and a contract. It is a receipt for goods delivered to the carrier; it is a contract to safely carry the goods so received.

(b) Of what further use are bills of lading?

ANS. Bills of lading are evidence of property. A carrier who delivers goods to a consignee without production of the bill of lading does so at his own risk. If the goods are delivered to one not entitled to receive them, the carrier will be held liable.

Art. 175.—Draft with Bill of Lading.

How does a draft with the bill of lading affect the title to a consignment?

ANS. When a shipper names himself or his agent as consignee, and sends a bill of lading with a draft attached for collection as a condition precedent to delivery, title remains in the shipper, or his assigns, until the bill of lading passes into the hands of the consignee by payment of the draft.

Art. 176.—Discrimination in Rates.

Has a common carrier any rights of discrimination between members of the public?

ANS. He has no such right. The carrier must serve all alike and for like compensation.

Art. 177.—Stoppage in Transitu.

(a) What is meant by the term, "Stoppage in Transitu?"

ANS. Stoppage in transitu is the right a shipper has, when he discovers the consignee to be insolvent, to stop the delivery of the goods shipped, by giving the carrier notice not to deliver them.

(b) What may the carrier lawfully require in such case?

ANS. Indemnity from the shipper before making the stoppage effective.

(c) Upon what principle is the right of stoppage in transitu based?

ANS. It is based upon the plain principle that one man's goods should not be used to pay another man's debts.

(d) When only, can this right be exercised?

ANS. Only in cases where the vendee's insolvency was unknown to the vendor at the time of sale, or when it occurred after the sale.

(e) When must this right be exercised, if at all?

ANS. Before delivery of the goods has been made to the vendee. After delivery, it is too late.

SALES OF PERSONAL PROPERTY.

Art. 178.—Sale.

(a) Define a sale, giving technical terms for the parties to a sale.

ANS. A sale is a contract by which one, called a "vendor" transfers property to another, called a "vendee," for a consideration called "purchase price" paid or to be paid.

(b) When the purchase price is payable in property, what is the transaction called?

ANS. It is called barter or exchange.

Art. 179.—Title.

(a) The purchaser of property must take it subject to what?

ANS. One who purchases property takes it subject to all defects in the title of its vendor.

(b) What legal maxim applies to the purchase of all property except negotiable instruments?

ANS. The maxim, *caveat emptor* (let the purchaser beware) applies.

(c) What will be the case if you purchase property which the vendor did not own and had no right to sell?

ANS. Generally, the true owner, or the person entitled to possession may take it.

Art. 180.—Bill of Sale.

(a) When is a bill of sale generally used?

ANS. When a sale is made of chattels so situated that immediate physical delivery is impracticable, it is often necessary and always safe to have the vendor execute and deliver a written bill of sale to the vendee.

(b) Write out a bill of sale transferring some personal property to your Commercial Law teacher; see form, page 84, Text.

(c) What is the chief object of a bill of sale?

Ans. To establish the fact that the vendee has honestly acquired the property, for value received.

Art. 181.—Requisites of Sale.

(a) Name three things necessary to constitute a valid sale.

ANS. The three requisites to a valid sale are as follows:

(1) The thing to be sold, which must be in existence.

(2) A determinable or a determined price.

(3) An intent to pass title from the vendor to the vendee.

(b) Give in illustration of the principles just mentioned, two examples in which the contract will be voidable by the vendee.

ANS. (1) If one man sells to another a horse and the horse is dead the contract is void.

(2) Should one man sell to another a house and lot, and the house had been partially destroyed by fire, both parties being ignorant of the fact, the contract will be voidable on the part of the vendee.

Art. 182.—Change of Ownership.

(a) In every sale there is a moment when the property in question ceases to belong to the vendor and becomes vested in the vendee. Until this occurs, whose is the loss in case the property is damaged or destroyed?

ANS. Until the title has passed to the vendee, the sale is incomplete and the loss on the property, if damaged or destroyed, is the loss of the vendor. Clearly, if the loss occurs after the sale is complete, the loss must fall upon the vendee.

(b) What controls in determining whether or not the title has passed?

ANS. The intent of the parties.

(c) How, then, is this intent determined?

ANS. By examining the words and acts of the parties in the light of the surrounding circumstances.

(d) Are there any positive, inflexible rules by which the intent may be invariably determined?

ANS. There are not. The courts are guided, however, by the following principles, namely:

(1) Sales for cash.
(2) Sales on credit.
(3) Condition unperformed by vendor.
(4) Delivery to vendee.
(5) Consigned goods.
(6) Express reservation of the title by vendor.

Art. 183.—Sales for Cash.

When does title pass on a cash sale?

ANS. Upon payment being made, and not before. All sales are for cash unless credit has been agreed upon, either expressly or by an established course of dealing.

Art. 184.—Sales on Credit.

In sales on credit, when does title pass?

ANS. When terms of credit have been arranged and the property sold has been set aside or designated, so that nothing remains to be done by the vendor before making delivery, title will pass at once to the vendee, unless the parties have otherwise agreed.

Art. 185.—Condition Unperformed by Vendor.

(a) How does a condition unperformed affect this title?

ANS. Unperformed conditions prevent the passing of title.

(b) What sort of conditions will thus effect title?

ANS. (1) When something remains to be done by the vendor to ascertain the identity (as by selecting), the quantity (as by measuring or weighing), the quality (as by testing), of the thing sold.

(2) If the thing sold is to be put into a certain condition before delivery, these, or any of these facts, go to prove that title has not passed to the vendee.

Art. 186.—Delivery to Vendee.

(a) When is delivery of goods evidence that title has passed?

ANS. When goods are sold on credit without reservation of title by the vendor, delivery of the goods to the vendee is evidence that title has passed to him.

(b) How does delivery of goods to a common carrier effect title?

ANS. Delivery of goods to a common carrier designated by the vendee (or to any common carrier if the vendee has not designated one), for unrestricted shipment to the vendee, is delivery to the vendee.

(c) In such case how does the law consider the common carrier?

ANS. The common carrier is the agent of the vendee.

(d) Is such delivery subject to stoppage in transit?

Ans. It is, in case the vendee is found to be insolvent before the arrival and delivery to him of actual possession of the goods.

(e) How about shipments C. O. D.?

Ans. Delivery to the carrier of goods shipped C. O. D. is not delivery to vendee, and, in that case, neither possession nor title will pass to the vendee until payment has been made.

Art. 187.—Consigned Goods.

(a) What of the passing of title when goods are consigned, to be paid for when sold?

Ans. In this case, no title passes to the consignee.

(b) In case consigned goods are lost, upon whom does the loss fall?

Ans. If the goods consigned are destroyed, the loss must fall upon the consignor, unless the parties have otherwise contracted.

(c) Can the consigned goods be levied upon by the creditors of the consignee?

Ans. They cannot.

(d) Are the laws of the several states uniform concerning consigned property?

Ans. They are not.

(e) Give the additional requirements of some states.

Ans. Some states require the consignor to give publicity, in some manner, to the fact that the goods are consigned and not sold.

(f) In such states, what will be the result if the consignor fails to do this?

Ans. Failing of this, in such states, the consignor is subject to the loss of important rights.

(g) When consignments are extensive, how only should they be made?

Ans. Only pursuant to carefully drawn contracts.

(h) What is the relation between consignor and consignee?

Ans. That of principal and agent.

(i) By what law, then, is the commission business governed?

Ans. By the law of Agency.

Art. 188.—Express Reservation of Title by Vendor.

(a) Give a provision as between vendor and vendee which is valid in all states.

Ans. Title does not pass to the vendee until full payment is made.

(b) What do some states hold as to the validity of this provision?

Ans. That this provision is void as to creditors and third parties, who take the property from the vendee without notice of his want of title.

(c) What is a common practice when the vendor desires to retain title?

Ans. To require the vendee to execute a title note.

Art. 189.—Inspection of Goods.

(a) When should the vendee inspect goods bought?

Ans. Promptly upon delivery to him.

(b) For what lawful reason may he reject them?

Ans. If they prove to be of an inferior kind or quality.

(c) When must this rejection take place?

Ans. To exercise this right of rejection, he must act promptly.

(d) How will unreasonable delay be construed?

Ans. Unreasonable delay in making inspection and rejection will be construed as acceptance.

(e) What is the result of acceptance?

Ans. Reception of goods after inspection, or after fair opportunity to inspect, waives all objections as to kind and quality.

Art. 190.—Latent Defects.

May there be any defects that are not waived by acceptance after inspection?

Ans. Latent defects, not discernable by usual and reasonable methods of inspection are not waived by acceptance after inspection.

Art. 191.—Quality of Goods.

What implied warranty is there in a purchase?

Ans. When goods are purchased in vague and general terms, there is an implied warranty that the goods shall be of merchantable quality.

Art. 192.—Purchase by Particular Description.

(a) What implied warranty is there when property is purchased by a particular description?

Ans. That the property is of that description.

(b) If the property proves otherwise than described, what is the result?

Ans. The warranty is broken, and the vendor is liable for the vendee's damages.

(c) May the vendee take other steps than collecting damages?

Ans. Yes, the vendee may rescind the contract and refuse the property.

Art. 193.—Warranty of Fitness.

(a) Explain clearly what is meant by "Warranty of Fitness."

Ans. When a manufacturer or dealer contracts to supply an article to be applied to a particular use, and the buyer trusts and relies upon the seller's judgment, and not upon his own, there is an implied warranty that the article shall be reasonably fit for the use specified.

(b) Is this true if the article is of a well-defined kind?

Ans. No, if the article is of a well-defined kind, even though the

order sets forth the purposes for which the article is to be used, there is no such implied warranty.

(c) Is there, in this case, any implied warranty of any kind?

ANS. Yes, but only that the article shall conform to the general description of articles of its kind, and that it shall be of good material and workmanship.

Art. 194.—Warranty of Food

(a) What implied warranty is there in the sale of material for food?

ANS. One who sells material for use as food, impliedly warrants that it is fit for the purpose.

(b) What remedy has the vendee if it proves unfit?

ANS. The vendee may rescind the sale upon discovery of the fact, and may recover damages.

(c) Has a dealer in foods or medicine ever any greater than a money liability?

ANS. If a dealer sells food which he knows, or by proper care on his part, could have known to be dangerous to the life and health of those who, without fault, eat it, he will be liable for the consequences.

Art. 195.—Warranty in Sales by Sample.

(a) What is the implied warranty, if any, when goods are sold by sample?

ANS. That the goods delivered shall equal the sample in quality, but there is no warranty that they shall be better than the sample.

(b) What will be the case if there be defects in the sample, equally visible to both parties?

ANS. The vendee cannot complain if the goods delivered contain the same defects.

Art. 196.—Fraud in Sales.

(a) If one purchases goods with the pre-existing intent not to pay for them, what may the seller do?

ANS. The seller may disaffirm the contract and recover his goods, unless the rights of an innocent person have intervened.

(b) Does the fact that the vendee knew himself to be insolvent at the time of purchase constitute fraud?

ANS. The mere fact that the vendee knew himself to be insolvent at the time of purchase is not fraud, provided he bought with intent to pay.

(c) Are sales made in fraud of creditors void?

ANS. Yes, if both vendor and vendee participate in the fraud, the sale will be void, but if the vendee is an innocent purchaser for value, the sale is valid.

(d) Are sales like any other contracts as to vitiation by fraud?

ANS. Yes, a fraud sufficient to avoid any other contract will avoid a sale.

SALES OF REAL ESTATE.

Art. 197.—Sales of Real Estate.

(a) What must be true of all contracts for the sale of real estate to make them valid?

ANS. They must be in writing.

(b) Will not a part payment of the purchase price bind an oral bargain for the sale of land?

ANS. It will not.

(c) Land contracts are of how many classes?

ANS. There are two classes.

(d) Name them.

ANS. (1) Land Options.
(2) Land Contracts.

Art. 198.—Land Options.

(a) What is a land option?

ANS. A written instrument, made for a valuable consideration, granting a person the right to purchase, if he chooses (but not binding him to purchase), certain real estate on certain terms, and within a specified time.

(b) What is usually the occasion for obtaining a land option?

ANS. When a person has reason to think he may, at some remote future time, desire to buy certain real estate, the usual practice is for him to obtain, if possible, an option upon it, running a sufficient length of time to enable him to fully decide whether he will or will not make the purchase.

(c) Are land options ever used for any other purpose than just mentioned?

ANS. Yes, land options are frequently used when it is desired to buy real estate without disclosing the name of the purchaser until after the purchase price has been fixed.

(d) Why is this?

ANS. Owners often ask excessive prices if it is known that for certain reasons the prospective buyer is in especial need of a particular piece of property, and especially, if the buyer is known to be wealthy.

(e) How might a land option be used to help the buyer in such case?

ANS. By commissioning a third party to obtain an assignable option in his own name, fixing the price at a fair amount.

(f) How is the option then made use of?

ANS. This option is then assigned to the real estate purchaser, who can then tender the price stated in the option and require conveyance of the property to himself.

(g) What can you say of the consideration of the option contract?

ANS. The option contract must be upon a sufficient consideration. A gratuitous option is void.

(h) What special provision may be made in the option contract regarding its purchase price?

ANS. The option may provide that the sum paid for it shall apply upon purchase price in the event of purchase.

(i) What will be considered a sufficient consideration for an option contract?

ANS. The payment of one dollar will be sufficient to make the contract binding upon the vendor, no matter how great the value of the land involved.

(j) What is usual in the fixing of the amount of consideration for an option contract?

ANS. Land owners usually charge for options a fair compensation for the advantage conferred.

(k) What is the binding force of an option?

ANS. The vendor is bound to sell if the vendee elects to buy; but the vendee is under no obligation to buy.

Art. 199.—Form of Option.

(a) With what care should options be executed?

ANS. When an option is valuable, it should be executed with the same formalities required for the execution of deeds.

(b) What should next be done with it?

ANS. It should then be recorded in the office where the public land records are kept, in the county where the optioned land is situated.

(c) What is the advantage to the vendee, of recording this option?

ANS. By recording the option, the owner of the land is prevented from selling the property while the option is in force, except subject to the option.

(d) By whom should the land option be signed?

ANS. It should be signed by all persons who are expected to sign the deed to be given in case of purchase. Thus, if the wife of the vendor is a necessary party to the anticipated deed she should sign the option contract.

(e) How will the courts treat a refusal on the part of the vendor to carry out the terms of the option?

ANS. When the vendor named in a valid option refuses to make and deliver the promised deed upon tender of full payment within the appointed time, the courts will enforce performance of the contract, or will award the vendee damages for its breach, as the vendee elects.

Art. 200.—Land Contracts.

(a) Describe a land contract

ANS. A land contract is a written agreement in which the vendor

undertakes to sell and convey, and the vendee undertakes to buy, make payment for, and receive conveyance of, certain land on specified terms.

(b) What may these terms embrace?

ANS. Any lawful arrangement which the parties choose to make.

(c) What is considered sufficient consideration to sustain such a contract?

ANS. The mutual promises contained in such a contract are a sufficient consideration to sustain it without payment of money by the vendee.

Art. 201.—Form of Land Contract.

(See sample form, page 94, Text.

Art. 202.—Parties to Land Contracts.

Who should be the parties to a land contract?

ANS. As in the case of an option, all persons necessary to make such final conveyance as is desired, should be joined in the contract as parties of the first part. The parties of the second part should include all from whom payment is expected.

Art. 203.—Recording.

(a) What is always a safeguard on the part of the vendee?

ANS. It is always the safer course for the vendee to have his contract acknowledged and recorded.

(b) What is the value of this recording?

ANS. It is notice to all the world of the rights of the parties thereto.

(c) Give a general example.

ANS. A. contracted with B. to sell B. certain land, B. recorded the contract. A. afterward, and while B's contract was in force, sold and conveyed the same land to C. C.'s title was subject to B.'s rights.

(d) Supposing B. had not recorded his contract, what would have been the case?

ANS. If B. had not recorded his contract and C. had bought innocently and without notice of B.'s contract, C. would have taken the property clear of any claim on the part of B.

(e) Would B. have any recourse whatever?

ANS. Yes, but only as against the vendor, A., whom he could sue for breach of contract.

(f) Is there ever any other form of notice to the world than recording?

ANS. Yes, the fact that a contract vendee is openly and visibly in possession of the property contracted for, is notice to all the world of his claim, whether his contract is recorded or not.

Again, even if the contract vendee has not recorded his contract, and is not in actual, visible possession of same, still if a third party acquires an interest in said property, with knowledge, or actual notice of vendee's rights, the original vendee's rights will hold.

Art. 204.—Forfeiture.

(a) Does the law favor forfeitures?

ANS. It does not.

(b) What provisions do land contracts usually make regarding payments?

ANS. They usually provide that payments shall be made on certain dates, and that, if payment is not so made, the contract and all payments made thereupon, improvements, etc., shall be forfeited.

(c) Can this always be enforced to the letter by the vendor?

ANS. No, even if payment is not made promptly, the contract is not, *ipso facto*, terminated.

(d) What is the usual ruling of the courts regarding this?

ANS. Unless he is grossly in default, the vendee may still tender the purchase price and interest, and compel conveyance, unless the vendor has, by some affirmative act, brought the contract to an end.

(e) What affirmative act on the part of the vendor may bring such contract to an end?

ANS. The vendor may terminate the contract by re-entering and taking possession of the land, or by some act equivalent thereto.

(f) If the vendor wishes to terminate a contract because payment is not made promptly, when should he act?

ANS. He should act without such delay as will indicate a contrary intention?

(g) Why?

ANS. Because, if the parties do not treat time as an essential element of the contract, the courts will not.

Art. 205.—Deeds.

(a) When real estate has been sold, how is the vendee given title?

ANS. By means of a written instrument called a deed.

(b) By what term is the person making the deed known?

ANS. As the grantor.

(c) By what term is the person to whom the property is being transferred known?

ANS. As the grantee.

(d) What are some of the things the deed should show?

ANS. The deed should identify these parties by full name and address, and should particularly and accurately describe the land conveyed.

(e) If there be any doubt about the correctness of the description, what should be done?

ANS. A surveyor should be employed for the purpose of making a perfect description of the lands by means of fixed landmarks and actual measurements.

Art. 206.—A Certain Quantity, "More or Less."

(a) What is the reason for some lands being described as containing a certain quantity "more or less."

ANS. This is done to cover possible variances caused by correction lines in the Governmental Survey.

(b) Have the parties to the transfer a right to complain of a shortage or surplus thus resulting?

ANS. Neither party can complain of a surplus or shortage, provided there has been no misrepresentation or fraud, and provided the discrepancy is not so great as to indicate that a serious and essential mistake has been made.

Art. 207.—Examination of Title.

(a) Of what should the grantee in all cases positively assure himself?

ANS. Of the sufficiency of the grantor's title.

(b) Why should this be looked after so closely?

ANS. Because the grantor cannot convey more or better title than he owns.

(c) What aids are provided in the examination of titles?

ANS. Abstracts of Title are a common provision for aid in the examination of titles.

(d) How far are these abstracts entitled to confidence?

ANS. Only so far as they are known to have been prepared by competent persons.

(e) What further precaution should be taken?

ANS. In important transations, if not in all, the original records should be searched.

(f) Is it best for ordinary persons to risk making this search of the original records themselves?

ANS. This service is usually best performed by lawyers.

Art. 208.—Warranty Deeds.

(a) How many and what principal kinds of deeds?

ANS. Deeds are of two principal kinds, warranty deeds and quit claim deeds.

(b) Why is the warranty deed so called?

ANS. Because of certain covenants which it commonly contains.

(c) Name five of these covenants most commonly used.

ANS. (1) That the grantor owns the conveyed premises in fee simple, absolutely free of any and all incumbrance.

(2) That he has a good right to convey the same.

(3) That the premises are free from incumbrance.

(4) That the grantee shall not be disturbed in his quiet possession of the premises by reason of any existing defect in the title.

(5) That the grantor will warrant and defend the grantee against eviction by anyone who may prove a paramount title.

(d) When will these last two convenants be considered broken?

ANS. Only in case of the actual eviction of the grantee, his heirs or assigns.

(e) When are covenants 1, 2, and 3 considered broken?

ANS. These are broken, if at all, at the moment the deed is executed, and are enforcible by the grantee only.

(f) What remedy has the grantee if covenants 1, 2, 3, and 4, are broken?

ANS. He may recover from the grantor the purchase price of the land, plus interest.

Art. 209.—Quit Claim Deeds.

(a) What is a quit claim deed?

ANS. A quit claim deed is a mere relinquishment to the grantee of whatever title, if any, the grantor has.

(b) What covenants does it contain?

ANS. None whatever.

(c) How, then, must the grantee accept such deed?

ANS. The grantee accepts such a deed as a venture.

(d) What does the grantee acquire?

ANS. He may acquire the property in question or he may acquire nothing.

(e) What liability does the grantor of a quit claim deed assume?

ANS. None whatever.

Art. 210.—Consideration.

(a) It is necessary that the consideration stated in the deed be the actual sum paid?

ANS. This is not necessary, though the true amount may be given, if desired.

(b) What may be the object in concealing the true consideration?

ANS. Often the parties do not care to make the price public.

(c) How may the consideration be safely written in to avoid this?

ANS. By writing in "One Dollar and other consideration," although the price paid may have been hundreds or thousands of dollars.

Art. 211.—Execution and Delivery.

(a) To make a deed complete for all purposes, what must be done?

ANS. It must be signed by the grantor or grantors, and acknowledged before some proper officer whose certificate of acknowledgment is added to the instrument.

(b) Name some one officer whose certificate of acknowledgment would suffice.

ANS. Any notary public.

(c) In some states, what further is required?

ANS. In some states two subscribing witnesses are required.

(d) May either party to an instrument become a witness to it?

ANS. No, but any other person who can write may be, regardless of age or sex.

(e) For what are acknowledgement and witnesses not necessary?

ANS. They are unnecessary as between grantor and grantee, only.

(f) Is it ever wise to accept any instrument without all the formalities?

ANS. No grantee should accept a deed, or other instrument, without all the formalities necessary to make it fully valid for all purposes.

(g) If the grantor is a married man, what should be required?

ANS. His wife should join in making the deed.

(h) What will be the effect upon the grantee's title if the wife of the grantor does not sign the deed?

ANS. The grantor's wife will retain her dower interest.

(i) What should be done in states recognizing a right of courtesy in the husband?

ANS. In such states the husband should join in all deeds in which his wife is grantor.

(j) What would be the case otherwise?

ANS. If the husband does not join where such provision exists, his interest in courtesy will remain in force?

(k) How about this in most states?

ANS. In most states, courtesy has been abolished.

Art. 212.—Delivery.

(a) When does a deed become operative?

ANS. From the time it is delivered by the grantor or his agent to the grantee or his agent.

(b) What of the effects of a deed duly executed, but not yet delivered?

ANS. An undelivered deed is of no effect.

(c) What is meant by putting an instrument in escrow?

ANS. Placing in the hands of some disinterested party for delivery upon the happening of a certain event.

(d) When does a deed placed in escrow become effective?

ANS. From the date of final delivery, but not before.

Art. 213.—Return of Unrecorded Deed.

(a) Does the fact that the act of delivering the deed transferring the title to the grantee, make it possible to restore the title by returning the deed to the grantor?

ANS. It does not.

(b) How then must title be restored?

ANS. A conveyance must be made for that purpose.

Art. 214.—Estates by Entireties.

(a) Illustrate an estate in entirety.

ANS. In most states, a deed to a husband and his wife creates for their benefit what is known as an estate in entirety.

(b) What is the law of ownership in such an estate?

ANS. Each owns the entire property.

(c) What about the conveyance of such property?

ANS. Neither has any interest which can be conveyed without joining the other spouse in the deed.

(d) What will happen in case of the death of either spouse?

ANS. The survivor retains the entire estate free from all liability for payment of the debt of the deceased spouse.

Art. 215.—Execution of Deeds in Blank.

Suppose a grantor signs a deed in blank or partly filled, with instructions to an agent to fill up the blanks later; will such grantor be held bound by the deed when it is so filled?

ANS. He will be bound.

Art. 216.—Recording.

(a) Is an unrecorded deed valid?

ANS. An unrecorded deed is valid as between grantor and grantee.

(b) What is the general rule regarding this as to third parties?

ANS. A third party who innocently gives value for, receives and records a second deed from the same grantor (or his assigns) takes a good title as against the first grantee whose deed was not recorded so soon.

(c) What precaution is suggested by this?

ANS. That all deeds should be promptly and properly recorded.

LANDLORD AND TENANT.

Art. 217.—Lease.

(a) How is the relation of landlord and tenant created?

ANS. It is created by contract.

(b) What is this contract called?

ANS. It is called a lease.

(c) Must it be written?

ANS. A lease may be oral, but an oral lease is not valid for more than a year.

(d) For how long is a written lease valid?

ANS. It may be valid for any period, even 999 years.

(e) What privileges are conferred upon the tenant by a lease?

ANS. The peaceable enjoyment of the leased premises.

(f) What right is conferred upon the landlord?

ANS. The right to receive a compensation called "rent."

(g) May a lease embody other agreements than the above?

ANS. Yes, a lease may embody any lawful agreement into which the parties may decide to enter.

Art. 218.—Duties of Landlord.

What implied covenant is there in all leases?

ANS. That the tenant shall have quiet enjoyment of the leased premises during his term, or so long as he shall not be in default.

Art. 219.—Renewal.

(a) Will the law recognize a covenant for renewal "on the same terms?"

ANS. Yes, the law will enforce such a covenant.

(b) Will the law require that the renewal contain a like clause of renewal?

ANS. It will not so require; otherwise the lease might become perpetual.

Art. 220.—Repairs.

(a) Is a landlord under implied obligation to keep the leased premises under repair?

ANS. He is not.

(b) Will the fact that the premises are in a ruinous condition work a rebatement of the rent?

ANS. It will not.

(c) When is a landlord not liable to a tenant for damages resulting from the leased premises being out of repair?

ANS. The landlord is not thus liable unless he has covenanted to keep them repaired.

(d) If the leased building be destroyed by fire, or otherwise, is the landlord under any implied obligation to rebuild?

ANS. He is not.

(e) Is the landlord under any obligation to keep the leased premises in repair?

ANS. In the absence of special agreement to do so, he is not.

(f) Is the tenant bound to make repairs?

ANS. In the absence of agreement to do so, he is not.

(g) Is there ever a time or condition when the landlord is liable for damages resulting through his failure to keep any part of the premises in repair?

ANS. Yes, if the landlord fails to keep any portion of the premises occupied by himself, in good repair, and damage to tenants arises therefrom, he may be held liable.

Art. 221.—Rent.

(a) What is the tenant's chief duty?

ANS. To pay the rent reserved in the lease.

(b) To what is the tenant subject for non-payment of rent?

ANS. He is subject to eviction.

(c) What, usually, must precede eviction?

ANS. A notice to quit given by the lessor to the lessee. Like any other right, notice to quit may be waived, at the option of lessee.

Art. 222.—Notice to Quit.

(a) What of the form of the notice to quit?

ANS. It need not be in any special form.

(b) What must be true of the notice?

ANS. It must describe the premises with reasonable certainty.

Art. 223.—Re-Entry of Landlord.

(a) When has the landlord the right of re-entry?

ANS. When the lease has expired by limitation, or through breach of covenant, as, for instance, the non-payment of rent.

(b) After notice to quit, where required, what right has the landlord further than re-entry of the premises?

ANS. He may not only re-enter, but may expel the tenant, providing he can do so without committing a breach of the peace.

(c) What must the landlord not do?

ANS. He must not use force or violence against the person of the tenant, but he may, in a peaceable manner, remove the tenant's goods from the premises.

(d) What should the landlord do in case the tenant cannot be evicted without force or violence?

ANS. He should resort to the courts to secure restitution of his property.

Art. 224.—Destruction by Fire.

(a) If a leased building be wholly or partially destroyed by fire making it untenantable, will the tenant be thereby released from paying rent for the remainder of the term of lease?

ANS. No, the tenant will have to pay rent to the end of his term, unless the lease (as it always should) provides otherwise.

(b) If the lessee has agreed, without qualification, to keep the leased building in as good a state of repair as when taken, what will he be held for?

ANS. He will be held to repair all damage, or to rebuild in case the building be destroyed, unless the damage or destruction be caused by act of God or the public enemy.

(c) What qualifying term is usually inserted?

ANS. "Excepting damage by the elements, the public enemy, or the Act of God."

Art. 225.—Assignment of Lease.

(a) When may a lessee assign his lease.

ANS. At any time, unless he has covenanted against so doing.

(b) Does sub-letting a part of the leased premises violate a covenant not to assign?

ANS. It does not.

(c) Would this be in violation of a covenant not to assign the lease or any part of it?

ANS. It would.

(d) For what is the assignee liable to the lessor?

ANS. For all the terms of the lease, even though none are mentioned in the assignment.

EXAMINATION NO. 3.

Embracing the subject of Special Contracts, treated in Articles 120 to 225 inclusive appearing in Practical Law. Answers to the following questions should be neatly written and handed to the teacher. Number each answer to correspond with the question. Write your name and current date on each sheet. Mark your paper Examination No. 3. Write only on one side of the sheet, and avoid erasures, blots, check marks, or other disfigurements.

1. Define (a) Principal
   (b) Agent.
2. Name two kinds of agents and define each.
3. What is a "Power of Attorney"?
4. What is the highest duty of an agent?
5. Give each of three ways in which an agent may bind himself.
6. How should an agent sign?
7. What is the result to an agent if he disregards instructions?
8. What is meant by ratification?
9. How may the authority of an agent be conveyed?
10. Name five ways in which an agency may be terminated.
11. What constitutes a Partnership?
12. Name and define each of three classes of partners.
13. Name two kinds of partnerships as to their purpose.
14. By what kind of contracts may partnerships be created?
15. What of a partner's authority to loan the firm's money to himself?
16. Will the firm be bound if a partner borrows money ostensibly for the firm and then uses it himself?
17. What is the partnership law regarding
    (a) Sharing losses and gains?
    (b) Liability for firm's obligations?
18. In the absence of special agreements, what about the compensation of individual partners?
19. Name five ways in which a partnership may be dissolved.
20. Who should be notified in case of dissolution of partnership, and how?

21. What are the terms applied by law to the employer and employee?

22. Name four special duties of the employer.

23 What about assumed risks?

24. What about negligence of fellow servants?

25. What is meant by contributory negligence?

26. Tell what you know about the payment of an employee?

27. What is the duty of an employee?

28. Name five good causes for the disharge of an employee.

29. Give the employee's two remedies for failure to receive pay according to contract, or for wrongful discharge.

30. What is the law governing the salary of an employee who continues to serve after the expiration of a definite contract?

31. (a) Name two kinds of carriers?

(b) Define each.

32. Give the liability of each class of carriers.

33. What can you say on the the subject of " Limitation of Liability?"

34. What of a carrier's liability for its own negligence?

35. When is a stipulation as to value held valid?

36. (a) May reasonable rules be lawfully prescribed by carriers, if brought to the attention of the shippers? If so, give an example.

37. What is the three-fold nature of a "Bill of Lading?"

38. What can you say regarding a draft with bill of lading?

39. What right of discrimination has a common carrier?

40. (a) Define "Stoppage in Transitu."

(b) When must this right be exercised, if at all?

41. Define the term Sale, using the technical terms applied to the seller and the buyer.

42. What is meant by the term "Caveat Emptor?"

43. What is a "Bill of Sale?"

44. What is the chief reason for requiring a bill of sale?

45. Name three requisites of a valid sale.

46. (a) What is the law governing loss or destruction of property during sale negotiations?

(b) When does title pass in a cash sale?

(c) When does title pass in a credit sale?

47. When is title passed on consigned goods?

48. Define "Latent Defects." Illustrate.

49. What is a "Title Note?"

50. What is the result of an unreasonable delay in the inspection of goods.

51. Will part payment bind the bargain in an oral contract for the sale of real estate? Why?

52. What is a "Land Option?"

53. (a) What is a "Land Contract?"

(b) What is the least that will constitute a sufficient consideration in a land contract?

54. (a) Who are the parties of the first, and who and the parties of the second part, in a land contract?

55. Give two important facts regarding forfeiture.

56. By what means should you strive to receive title to real estate?

57. Of what should the buyer always assure himself regarding the examination of title? How? Why?

58. Name the covenants commonly contained in a "Warranty Deed."

59. Explain "Estates in Entireties."

60. What is the effect of executing and delivering a deed in blank?

61. How is the relation of landlord and tenant created? What called?

62. Give the general rights conferred upon a tenant by a lease.

63. What is the chief duty of the landlord?

64. Give five rules governing repairs.

65. What is the tenant's chief duty?

66. Give tenants liability for rent in case of partial or entire destruction of tenement.

67. Give three steps sometimes necessary to the eviction of a tenant.

68. Give landlord's liability to tenant in case the tenant is partially or wholly destroyed.

69. What are the lessee's rights in regard to sub-letting?

70. What are lessee's rights in regard to assigning?

BANKING.

Art. 226.—Banks.

(a) What classes of banks have we as to organization?

ANS. There are three; National, State and Private.

(b) Define each.

ANS. (1) A national bank is a corporation organized under the laws of the United States.

(2) A state bank is a corporation organized under the laws of some particular state.

(3) A private bank is an unincorporated concern, sometimes unrestricted by state or federal supervision, and generally conducted under sole ownership or partnership organization.

(c) What can you say of the existence of savings banks?

ANS. They exist under the laws of most states.

(d) What power is generally given them regarding loans?

ANS. They are usually empowered to loan a portion of their deposits upon real estate securities.

(e) What peculiarity regarding a savings bank's solicitation of deposits?

ANS. They usually invite small as well as large deposits, and pay a low rate of interest upon balances left on deposit during a specified time.

(f) What do they give as evidence of deposits made?

ANS. A pass book.

(g) What of the significance of the terms usually printed in these pass books.

ANS. In general, they amount to a contract between the depositor and the bank.

Art. 227.—General Deposits.

(a) When one makes a general deposit upon open account in a bank, what is the relationship established?

ANS. The bank merely becomes the depositor's debtor. The money becomes the bank's property.

(b) If money so deposited is lost or stolen, whose is the loss?

ANS. The bank is the loser.

(c) Under what condition must the bank return the money so deposited to the depositor?

ANS. No matter what becomes of the money, the bank must return to the depositor a like amount on demand.

(d) How is this demand made by the depositor?

ANS. The demand is made by check.

(e) What is a check?

ANS. A check is a written order directed to the bank requiring it to pay a certain sum of money to a certain person or firm therein named, or to his or their order, or to bearer, upon presentation.

(f) What is meant by presentation?

ANS. Presentation of a check for payment is a demand of payment.

(g) What will be the case if a bank, having sufficient of the depositor's funds to meet the check, refuses payment of the depositor's check?

ANS. The bank will be liable to the depositor for all damages arising from the non-payment.

Art. 228.—Presentation of Check.

(a) When should a check be presented for payment?

ANS. If the person receiving the check and the bank upon which it is drawn are in the same place, the check must (in the absence of some sufficient excuse), be presented on the same day or, at latest, before the close of business hours on the day after it is received.

(b) What is the case if the person receiving the check and the bank upon which it is drawn are in different places?

ANS. Then the check must be forwarded at the time it should otherwise have been presented.

(c) Under what conditions only may these rules be varied?

ANS. Only by showing strong reasons for non-compliance.

Art. 229.—Stoppage of Payment.

(a) When may payment of a check be countermanded?

ANS. At any time before the bank has made acceptance or payment.

(b) How should the drawer stop payment?

ANS. The drawer merely gives the bank a description of the check, together with instructions not to pay such check upon presentment.

Art. 230.—Check not an Assignment.

(a) Does a check act as an assignment?

ANS. A check does not operate as an assignment to the payee of any part of the drawer's funds on deposit.

(b) When is a bank liable to the holder of a check?

ANS. When it accepts or certifies the instrument, and not before.

(c) When is a bank bound to pay a check it has accepted or certified?

ANS. Upon demand of the holder

Art. 231.—Certified Checks.

(a) By whom and how is a check certified?

ANS. A check is certified by the cashier or teller of a bank on which it is drawn, writing the word "Certified," or "Good," or some equivalent expression, across the face of the check and signing his name thereto, as cashier or teller, as the case may be.

(b) What does the bank always do, upon the certification of a check?

ANS. The bank immediately charges the amount of the certified check to the drawer's account, and then assumes the payment.

(c) If a check already certified is received in payment of debt, and the certifying bank is insolvent, or fails before the check can, by the exercise of proper diligence, be presented for payment, will the drawer be released from liability?

ANS. No, the drawer will, in such case, remain liable for the debt which the check was given to pay?

(d) When one who has received a check in payment of a debt thereafter causes the check to be certified, how does this action effect the drawer and indorser?

ANS. The drawer and all indorsers are thereby discharged from liability.

(e) What is the reason for this?

ANS. At the time the check was certified, demand for payment might have been made.

(f) What general principle is this based upon?

ANS. That the holder of a check, having elected not to demand payment when he might have done so, must thereafter abide the consequences of his choice.

Art. 232.—Forged Checks.

(a) On what ground is forgery punishable?

ANS. It is punishable as a crime.

(b) Is it very prevalent?

ANS. Yes, it is a danger which constantly menaces banks.

(c) Since a bank must not pay out deposits except on valid orders from its depositors, what follows?

ANS. If a bank pays out money on a forged check, the bank cannot ordinarily charge the amount so paid against the account of its depositor.

(d) Is there ever any exception to this?

ANS. Yes, in case the depositor's negligence has, in some way, contributed to induce the payment.

(e) What is a bank absolutely bound to know regarding a check?

ANS. To know the signature of its depositors.

(f) What is generally the result if a bank pays a check bearing the forged signature of a depositor?

ANS. The bank cannot, in general, recover the amount from a *bona fide* holder to whom it has made payment.

(g) What may be the result if a bank pays a "raised" check?

ANS. It may recover the amount of the fraudulent increase, even from a *bona fide* holder to whom the bank has made payment.

(h) Why is this relief granted?

ANS. While a bank must know its depositor's signature, it cannot be presumed to know what he has written in the checks.

Art. 233.—Returned Checks.

(a) What is generally held to be the depositor's duty regarding paid checks.

ANS. To examine the paid checks returned to him by the bank, for forgery.

(b) What will generally be the result if the depositor negligently fails to detect forgeries?

ANS. Generally, he must bear the loss.

Art. 234.—Special Deposits.

Does the relation of debtor and creditor exist when money is deposited with and accepted by a bank to be paid out for a special purpose?

ANS. Such relation does not exist. The money does not become the property of the bank.

Art. 235.—Set Off.

(a) The relation between a bank and its depositor being that of debtor and creditor, what follows?

ANS. It follows that the bank is bound to pay all checks of the depositor, so long as it has sufficient funds in its possession for that purpose.

(b) What exception is there to this rule?

ANS. When a depositor owes a bank a matured debt, it is equally the right of the bank to set such debt against funds credited to the debtor on its books. In other words, the bank may appropriate a deposit to the payment of a matured debt due from the depositor to the bank.

(c) What is this right of the bank called?

ANS. It is called the right of "Set Off."

Art. 236.—Instruments Payable at Bank Treated as Checks.

(a) What is said to be equivalent to a check drawn against a depositor's account?

ANS. A bill or note made payable at the bank where the obligor keeps his account.

(b) By the law of Set Off, what may the bank do with such bill or note?

ANS. The bank may make payment and charge the paid instrument against the account of the obligor.

Art. 237.—Overdrafts.

(a) What is an overdraft?

ANS. When a bank has paid its depositor's checks to an amount exceeding the deposit, the depositor is said to have made an overdraft.

(b) What sort of a debt does it become?

ANS. A debt immediately due the bank, and as collectible as any personal account.

(c) What are the rules of most banks regarding overdrafts?

ANS. They very properly prohibit overdrafts.

Art. 238.—President.

(a) Has the president of a bank authority to act as its agent?

ANS. No, except as such power is conferred upon him.

(b) How may such authority be conferred upon him?

ANS. Either expressly or by necessary implication.

(c) How is a bank president's authority to be ascertained?

ANS. From the statutes under which the bank is conducted, the character, the by-laws, and the adopted motions or resolutions of the board of directors.

Art. 239.—Vice-President.

(a) What are the duties and powers of the vice-president?

ANS. During the absence or disqualification of the president, the vice-president may exercise all powers and duties ordinarily exercised by the president.

Art. 240.—Cashier.

(a) What is the implied authority of the cashier of a bank?

ANS. The cashier's implied authority is quite limited.

(b) May he be given more authority?

ANS. He may be given express authority to carry out any transaction, or class of transactions, delegated to him by the board of directors.

(c) In the absence of express authority, when has he power to bind the bank?

ANS. Only when he acts within the general scope of his ordinary duties.

(d) What authority must he have to go beyond these?

ANS. He must have the authority of the board of directors.

(e) What rights has the cashier, by reason of his position, as to third parties?

ANS. (1) To receive payment of debts.

(2) To cancel obligations and surrender securities.

(f) Name two things he has *no* implied power to do.

ANS. (1) He has no implied power to receive payment in anything other than money.

(2) He cannot make binding contracts outside the scope of his ordinary duties.

Art. 241.—Powers of Directors.

(a) Within what limits, only, have the directors power to manage and control the affairs of the bank?

ANS. Within the limits of its character purposes, but not beyond.

(b) To whom may the directors delegate special duties?

ANS. To the president, cashier, or other officers, but they cannot confer upon another a power which they do not themselves possess.

(c) Illustrate.

ANS. For example, they cannot authorize the president or cashier to speculate in stocks, real estate, or other property.

(d) May a bank own stocks in other corporations?

ANS. Generally it may not, except when it acquires them for the purpose of protecting itself against imminent loss.

(e) When may a bank purchase real estate?

ANS. A bank may buy real estate necessary for the conduct of its own business, but it cannot buy real estate for speculative purposes.

Art. 242.—Liabilities of Directors.

(a) What are the liabilities of directors who serve without pay?

ANS. Except when otherwise provided by statute, bank directors who receive no pay for their services are *not* responsible to the bank for anything short of gross negligence, fraud or reckless inattention to duties, whereby frauds are permitted.

(b) Are they held liable for a mistaken use of discretion?

ANS. They are not, even though loss ensues.

Art. 243.—Collections.

(a) What is said to be the weight of authority regarding the liability of a bank for collection made from a distant party?

ANS. By the weight of authority, a bank that receives for collection the note, draft or other claim of a customer upon a party residing at some distant point, is liable for the loss of the proceeds of the collection through the failure or default of a correspondent to whom the bank has sent the item for collection.

(b) Illustrate.

ANS. If A. delivered a note to a bank for collection from C. at a distant point, and if the bank sent the note to D., its correspondent bank, and if D. collected the note and kept the proceeds, the first bank would, under the principle just stated, be bound to bear the loss and pay to A. the full amount collected by D.

(c) By whom is this doctrine denied?

ANS. The courts of many states deny this doctrine, and hold that, when a note, draft or other claim is left with a bank for collection in the regular course of business, and the bank transmits the claim, accompanied with proper instructions, to a correspondent of supposed responsibility, selected with reasonable care, the forwarding bank will not be liable to the owner of the claim if the correspondent makes the collection and misappropriates the proceeds.

(d) In case of such difference of opinion, what should the business man always do?

ANS. He should ascertain the law as laid down by the courts of his own state.

COMMERCIAL PAPER.

Art. 244.—Classes of Paper.

(a) What is included under the head of "Commercial Paper?"

ANS. Commercial paper includes all transferable written instruments used in carrying on trade and commerce.

(b) Name a few of the more common of these.

ANS. Bills of lading, warehouse receipts, stock certificates, checks, drafts, certificates of deposit, promissory notes, money-bonds, and coupons.

(c) When are these instruments transferable?

ANS. Unless restricted by their own terms, these instruments are all readily transferable.

(d) What of the title of the purchase of such instruments?

ANS. The purchaser takes at least as good, and sometimes a better, title than was possessed by the transferor.

(e) What name is applied to such papers as carry with them a better title and broader rights to the transferee than were held by the transferor?

ANS. Such papers are called negotiable instruments.

Art. 245.—Negotiable Instruments.

(a) Name two strictly negotiable instruments.

ANS. The two forms of papers said to be strictly negotiable, are bills of exchange, and promissory notes.

(b) What are included under promissory notes?

ANS. Ordinary notes of hand, and also certificates of deposit issued by banks.

Art. 246.—Advantages of Negotiability.

(a) What instruments may be bought and sold?

ANS. In general, any instrument, whether negotiable or not, may be bought and sold.

(b) To what infirmity is the transfer of a non-negotiable instrument subject?

ANS. In case of the transfer of a non-negotiable instrument, the transferee merely "stands in the shoes" of the transferor.

(c) What defenses may be urged against the purchaser of a non-negotiable instrument?

ANS. Defenses against the seller of a non-negotiable instrument may be urged with equal force against the purchaser of it.

(d) Will not the fact that the purchaser of a non-negotiable paper has given value for it and that he bought it innocently and before it is due, protect him against defects in his transferor's title?

ANS. Generally, it will not. If the transferor's title was imperfect, the transferee's title will be likewise imperfect.

(e) In what respect is the purchaser of a non-negotiable paper like the purchaser of any other chattel?

ANS. In that he buys at his own peril.

(f) Is this true of a purchaser of a negotiable paper who becomes a holder in due course?

ANS. No, as such holder, he takes perfect title to the paper, although the transferor's title may have been defective.

(g) Would the transferee have a good title under above conditions if the negotiable paper were stolen?

ANS. Yes, even though it may have been stolen from the maker, and although the transferor may have been the thief, still, with certain exceptions, the transferee may take perfect title.

(h) Name two of these exceptions.

ANS. (1) Unless the instrument is a forgery, or the equivalent of a forgery.

(2) Is for some other reason void.

Art. 247.—Holder in Due Course.

(a) Under what condition can one not become a holder in due course?

ANS. (1) Unless the paper is complete and regular upon its face.

(2) Unless he purchases it in good faith, without notice of defense.

(3) Unless he purchases before maturity.

(4) Unless he purchases for value.

(b) Why may not the purchaser of a paper which is obviously incomplete or irregular be considered a holder in due course?

ANS. Because the defect apparent upon the face of the instrument itself is notice to him that something is wrong, and, if he buys, he takes it subject to such notice.

(c) What becomes the purchaser's duty?

ANS. It becomes his duty to investigate.

(d) What will be the result if the buyer neglects this duty?

ANS. He must suffer the consequences.

(e) Why should a paper being overdue at time of purchase prevent the buyer from becoming a holder in due course?

ANS. Because the fact that a paper was dishonored, or was not paid at maturity, is indication that there is something wrong.

(f) Give a case in which a person failed to become a holder in due course because he did not give adequate value.

ANS. In the case of DeWitt v. Perkins, 22 Wis., 451. A note of $300.00 given by a responsible person was sold for $5.00. The court held that the purchaser was not a holder in due course.

(g) Why should not a person become a holder in due course of paper which he has not purchased in good faith?

ANS. Because if he could, one might, by collusion, turn an instrument against which defenses are claimed, over to a third person, who would then have power to collect it without regard to the rights of the obligor, and thus much injustice be done.

(h) What of set-offs and recoupments which might have been valid against such papers?

ANS. In the hands of the transferor or other holders, set offs and recoupments cannot be applied to the instrument when in the hands of a holder in due course.

Art. 248.—Transferee of Holder in Due Course.

What are the rights of one who derives his title to an instrument through a holder in due course?

ANS. If he is not himself a party to any fraud or illegality affecting the instrument, he has all the rights of his transferor as to parties prior to such transferee.

Art. 249.—Persons Not Holders in Due Course.

(a) When one purchases an instrument under conditions which prevent him becoming a holder in due course, he must take it subject to what?

ANS. Subject to all the defenses that could be made against it, were it non-negotiable.

(b) Can you express this differently?

ANS. In other words, the special legal advantages surrounding negotiable instruments are available to holders in due course only.

Art. 250.—Reason for Protecting Holders in Due Course.

(a) Why are negotiable papers given special advantages?

ANS. For the purpose of encouraging their use.

(b) Why is this necessary?

ANS. There is not enough money in the world to permit the transaction of the world's business.

(c) How does the protection of negotiable paper help?

ANS. The deficit is covered by the use of commercial paper.

(d) Give another reason.

ANS. The carrying of money and its transportation from place to place, particularly in large sums, is both inconvenient and dangerous.

(e) Name three forms of commercial paper which have thus become as important as money to trade.

ANS. The check, the draft, and the promissory note.

(f) How have these instruments come to be used, and through what means?

ANS. Under the special protection afforded by law, to holders in due course, these instruments pass from hand to hand very much like money.

(g) What proportion of trade is carried on by their use?

ANS. The greater portion.

(h) Mention a few special ways in which they facilitate commerce.

ANS. (1) They enable credit to stand in the place of cash.

(2) They do away with the slow process of counting.

(3) They lessen the dangers of transportation.

(4) By filling the gap between the actual money of the country and the volume of the country's business, they render our financial system elastic and self-regulating.

Art. 251.—The Negotiable Instruments Law.

(a) What proportion of the states of the union have adopted practically uniform statutes regarding such papers?

ANS. More than half.

(b) By what name are these statutes known?

ANS. These uniform enactments are known as the "Negotiable Instruments Law."

(c) How does this law effect much that was formerly uncertain and in dispute?

ANS. It renders certain, much that was formerly very uncertain.

(d) Why, think you, has the Negotiable Instruments Law been followed in the preparation of our text?

ANS. (1) Partly because it is the statute law in a majority of the states.

(2) Partly because it declares the most advanced position yet attained in the law of negotiable instruments.

(e) With what papers only does the Negotiable Instruments Law deal?

ANS. With bills of exchange and with promissory notes.

(f) Why is this true?

ANS. Because these are the only truly negotiable instruments.

Art. 252.—Bills of Exchange.

(a) What is a bill of exchange?

ANS. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand, or at a fixed and determinable future time, a certain sum of money to order or to bearer.

(b) By what names are bills of exchange more familiarly known?

ANS. They are more familiarly known as checks and drafts, and are frequently referred to as "bills" for the sake of brevity.

(c) Bills of exchange are of what two classes?

ANS. Foreign and inland, (or domestic).

(d) Define each.

ANS. When a bill (i. e. a check or draft) is both drawn and made payable within one and the same state, it is a domestic, or inland bill. All others are foreign bills.

(e) Illustrate each.

ANS. A check drawn in Springfield, Ill., and payable in Chicago, Ill., is an inland bill; but a check drawn in Indianapolis, Ind., and payable in Chicago, Ill., is a foreign bill.

Art. 253.—Promissory Notes.

(a) What is a negotiable promissory note?

ANS. An unconditional promise in writing, made by one person to

another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a certain sum of money to order, or to bearer.

(b) What are promissory notes usually called?

ANS. For the sake of brevity, they are usually called "notes."

THE LEGAL HISTORY OF A BILL OF EXCHANGE.

Art. 254.—Issue of Bill.

(a) Draw up the draft corresponding with the following memorandum: Mulford & Co., of Chicago, having sold goods in the amount of $500.00 to Geo. Grant., of New York, upon the latter's agreement to accept their draft, drawn payable ten days after sight, drew and discounted at the Bank of Commerce, Chicago, the following instrument:

$500.00 *Chicago, Ill, (current date), 19..*

At Ten days Sight, pay to the order of Mulford & Co., Chicago, Ill., Five Hundred Dollars.

Value received, and charge to the account of

To George Grant,
Detroit, Mich.

Mulford & Co.

Art. 255.—Parties to the Bill.

(a) Who are the original parties to the bill above outlined? Define each.

ANS. Mulford & Co., are the drawers; Geo. Grant is the drawee; Mulford & Co., is the payee.

(b) Illustrate the indorsement on back of the draft, drawn up under question (a), as it would appear when the draft was discounted at the bank.

ANS.

Pay to the order of the Bank of Commerce, Chicago.

Mulford & Co.

(c) On the back of the draft you drew up under question (a) show, in proper form, an indorsement in full to the Chicago City Bank, Chicago, Ill.

ANS.

Pay to the order of the Bank of Commerce, Chicago.

Mulford & Co.

Pay to the order of the Chicago City Bank.

Bank of Commerce, Chicago.

(d) The Chicago City Bank upon receipt of this draft, immediately sent it to the Corn Exchange National Bank, Chicago, for collection. Show all indorsements which should appear on the back of this draft up to date.

ANS.

Pay to the order of the Bank of Commerce, Chicago.

Mulford & Co.

Pay to the order of the Chicago City Bank.

Bank of Commerce, Chicago.

Pay to Corn Exchange Nat'l Bank for Collection.

Chicago City Bank.

Art. 256.—Presentation and Acceptance.

(a) The Corn Exchange National Bank, immediately upon receipt of this draft, presented it to the drawee and had it accepted. How is this done?

ANS. By the drawer writing across the face of the draft the word "accepted," the date, and signing his name.

(b) The drawee's relation to this accepted instrument now becomes the same as if it were what other form of negotiable paper?

ANS. His promissory note.

Art. 257.—Maturity.

(a) This draft now has how long to run?

ANS. Ten days from date of acceptance.

((b) It therefore falls due when?

ANS. On the tenth day from acceptance.

(c) If this due date falls upon a Sunday or legal holiday, when should the instrument be presented for payment?

ANS. On the next following business day.

Art. 258.—Dishonoring a Bill.

(a) Suppose that upon presentment for payment, by the endorsee or holder, this instrument was dishonored. Explain fully what this means.

ANS. It means, in this case, the drawee and acceptor, (George Grant), refused to pay the draft when presented for payment by the holder.

(b) Who is the present indorsee or holder?

ANS. The Corn Exchange National Bank.

(c) Is this draft a foreign or domestic bill?

ANS. It is a foreign bill of exchange, because it is drawn by a party in one state, and payable in another state.

Art. 259.—Protest.

(a) It now becomes necessary (since this is a foreign bill), for the holder to do what?

ANS. It becomes necessary for the holder to protest the bill.

(b) How is this done? Explain briefly.

ANS. The holder makes a sworn statement, acknowledged by a notary public, to the effect that the paper was by him duly presented for payment in full accordance with the requirements of law and that the drawee refused payment.

(c) What is the purpose of this step?

ANS. It constitutes due notice to all parties concerned, and prevents the drawers and indorsers being discharged from further liability.

(d) How is protesting a bill likely to effect the credit of the drawee?

ANS. It seriously damages his credit?

Art. 260.—Notice of Dishonor.

(a) This instrument having been duly protested, what notice should be sent, by whom, and to whom?

ANS. A notice of this protest, giving full description of the instrument protested, should be given by the holder of the protested instrument to all parties to the instrument.

(b) If, for any reason, this notice was not given, what would be the effect upon the drawers and indorsers of the instrument?

ANS. It would release them from all liability.

(c) Would this notice have to be written?

ANS. Notice of protest should always be written. Notice of dishonor need not be written, but is better so, as it is then more easily proved that notice has been given.

(d) What if the notary public does not give this notice upon request of the holder?

ANS. If the notary public does not attend to it, the holder, or some other agent of the holder, must.

(e) What of the form of the notice of dishonor?

ANS. No special form of notice is required by law. (For a good form, see page 126, Text.)

Art. 261.—Discharge for Want of Notice.

(a) How are drawers and indorsers of a draft affected if not given prompt notice of its dishonor?

ANS. They are discharged from liability thereupon.

(b) What kind of notice is required?

ANS. Either written or verbal notice will suffice.

(c) Which is usually given, and why?

ANS. Written notice is generally given, as it is more readily capable of proof.

(d) Who may waive notice, and how?

ANS. A drawer or indorser may waive notice, either by words or acts.

(e) Is one who has waived notice entitled to it?

ANS. He is not.

Art. 262.—Settlements After Dishonor.

(a) The draft in question having been properly protested and notice having been given to Mulford & Co., and to the Bank of Commerce, Chicago, what would result?

ANS. The Bank of Commerce would be obliged to return to the Chicago City Bank, any funds which the latter had invested in the paper, together with the cost of protest and notice.

(b) Would the Bank of Commerce then have any recourse?

ANS. Yes, it could then proceed to collect from Mulford & Co., such sums as it had advanced upon the paper, together with interest and expense.

(c) What would be the next natural procedure?

ANS. Mulford & Co., would then proceed to enforce their claim against the drawee, Geo. Grant, the same as though they were the holders of his note.

THE LEGAL HISTORY OF A PROMISSORY NOTE.

Art. 263.—Issue of Note.

(a) R. Wilson, of Chicago, purchased from Ray Krause & Co., of New York City, goods to the value of $1,000.00 for which he made payment by delivering to R. Krause & Co. the following sixty-day, 6% negotiable note, upon which Henry Vogel was surety, and payable at the Merchants Bank, Chicago. Illustrate this note drawn up in proper form.

ANS. *Chicago, Ill., (Current date) 19.....*

Sixty Days after date I promise to pay to the order of Ray Krause & Co., New York, the sum of One Thousand and no / 100 Dollars, payable at Merchants Bank, Interest at 6 per cent. Value received.

R. Wilson.
Henry Vogel.

Art. 264.—Indorsement in Blank.

(a) Upon receiving the note, Ray Krause & Co. wrote their firm name across the back of the note. What kind of an indorsement is this called?

ANS. This is an indorsement in blank.

(b) What is necessary to transfer this note?

ANS. Delivery only.

This note then passed into circulation and was transferred without indorsement, through the hands of several parties, until it finally came into the hands of Merritt Rathje.

Art. 265.—Indorsement in Full.

(a) Mr. Rathje, being a careful man, knew that the note indorsed in blank, was subject to what?

ANS. To theft.

(b) Knowing this, he wrote above the blank indorsement of Ray Krause & Co. the words, "Pay to the order of Merritt Rathje;" this converted the blank indorsement into what kind of an indorsement?

ANS. Into a special indorsement, commonly called an indorsement in full.

(c) Had Mr. Rathje a right to do this?

ANS. Yes, Mr. Rathje, or any other holder, always has a perfect right to thus change a blank indorsement into an indorsement in full.

(d) Upon what ground has a holder the right to do this?

ANS. Upon the ground that the act in no way increases the liability of the maker or indorsers, hence they cannot object.

(e) What kind of paper has Mr. Rathje made of this until he himself indorses it?

ANS. He has made it a non-transferable instrument, until such time as he indorses it.

(f) To whom is this instrument made unavailable by this indorsement?

ANS. To any person who might come into possession of it wrongfully.

(g) Show these two indorsements.

ANS.

As Ray Krause & Co. indorsed it.	As Merritt Rathje changed it.
Ray Krause & Co.	*Pay to the order of Merritt Rathje.* *Ray Krause & Co.*

Art. 266.—Waiver of Rights by Indorser.

(a) Later, Merritt Rathje sold the paper to Leo Summers, who insisted upon Rathje's indorsement being so made that Rathje would not be able to escape liability in case of any failure to present the paper for payment at maturity, or in case of failure to give Rathje notice of non-payment. How does Summers want Rathje to indorse the note?

ANS. In full and with demand, protest and notice waived.

(b) Show this indorsement as it should appear.

ANS.

Pay to the order of Merritt Rathje.
Ray Krause & Co.

Pay to the order of Leo Summers, demand, protest and notice waived.
Merritt Rathje.

Art. 267.—Indorsement Without Recourse.

(a) Leo Summers then sold the note to L. Bere, who desires to escape all liabilities. How can he indorse the note to do this?

ANS. He can indorse the note in full, but qualifiedly (i. e. with recourse).

(b) Show all indorsements to date, including this.

ANS.

Pay to the order of Merritt Rathje.
Ray Krause & Co.

Pay to the order of Leo Summers, demand, protest and notice waived.
Merritt Rathje.

Pay to the order of L. Bere, without recourse on me. *Leo Summers.*

(c) How does this form of indorsement affect Mr. Summers?

ANS. It frees him from any liability or obligation as an indorser upon the paper.

(d) Mr. L. Bere wishes to transfer the note to Bernard Howe, transferring title and guaranteeing payment. How shall he do this?

Show all indorsements to date.

ANS.

Pay to the order of Merritt Rathje.
Ray Krause & Co.

Pay to the order of Leo Summers, demand, protest and notice waived.
Merritt Rathje.

Pay to the order of L. Bere, without recourse on me.
Leo Summers.

Pay to the order of Bernard Howe, prompt payment at maturity guaranteed.
L. Bere.

Art. 268.—Guaranty of Payment.

How does this form of indorsement effect Mr. Bere?

ANS. Under this indorsement and guarantee Mr. Bere would be liable to subsequent holders for payment of the note even though demand and notice were omitted, provided Mr. Bere suffered no damage by the omission, and provided no extension or other change of the terms of the note were made without his consent.

Art. 269.—Restrictive Indorsement.

The note being now almost due, Bernard Howe deposited it with the Chemical National Bank, New York, for collection, indorsing it restrictively. Show all indorsements to date.

ANS.

Pay to the order of Merritt Rathje.
Ray Krause & Co.

Pay to the order of Leo Summers, demand, protest and notice waived.
Merritt Rathje.

Pay to the order of L. Bere, without recourse on me.
Leo Summers.

Pay to the order of Bernard Howe, prompt payment at maturity guaranteed.
L. Bere.

Pay to the order of Chemical National Bank, New York, for collection.
Bernard Howe.

Art. 270.—Dishonor and Notice of Dishonor.

(a) The Chemical National Bank, of New York, presents the note for payment on the date of maturity, at the office of the Merchants Bank where it is made payable, and payment is refused. What is now necessary for the holder to do?

ANS. Send notices of dishonor.

(b) To whom should notice be sent?

ANS. To the maker and all indorsers, excepting such only as may have waived notice.

(c) Has any party to the note under discussion waived notice, and if so, whom?

ANS. Merritt E. Rathje, the first indorsee and second indorser, waived notice.

(d) To what other form of notice of dishonor is this notice similar?

ANS. It is substantially the same form as notice of dishonor of a bill.

(e) Is protest of a note proper and customary?

ANS. It is, but not necessary.

(f) What papers only is it absolutely necessary to protest?

ANS. Foreign bills of exchange are the only instruments which absolutely require protest when dishonored.

(g) Name all the parties to this note thus far, in the order in which they became such, and opposite the name of each tell what party he became. If, during the history of this note, any one's name figures as more than one party, give them all in logical order, also tell whether or not they are entitled to notice of dishonor.

ANS. (1) R. Wilson, maker, indorser, not entitled to notice.

(2) Henry Vogel, surety.

(3) Ray Krause & Co., payee, indorsers. Entitled to notice as indorsers.

(4) Merritt E. Rathje, indorsee, indorser. Notice waived, therefore not entitled to notice.

(5) Leo Summers, indorsee indorser. Indorser without recourse, notice unnecessary.

(6) L. Bere, indorsee, indorser, guarantor. Entitled to notice as indorser, but not as guarantor.

(7) Bernard Howe, indorsee, indorser. Entitled to notice as indorser.

(8) Chemical National Bank, indorsee by restricted indorsement. Notice not necessary.

Art. 271.—Collection.

(a) We will now suppose that Bernard Howe pays back to the Chemical National Bank the money he has received from the bank upon the note, or that he permits the bank to charge the note against his account. What recourse will Bernard Howe have?

ANS. He may now recover the amount from L. Bere, and L. Bere, in turn, will recover from Merritt E. Rathje.

(b) How about Leo Summers, who transferred the note to L. Bere?

ANS. Leo Summers, having indorsed without recourse, cannot be held.

(c) Suppose, now, that Merritt E. Rathje finds Ray Krause & Co. insolvent, what will be Mr. Rathje's remedy?

ANS. He must look to the maker, R. Wilson, and sue him, if necessary, for the amount, or, if the latter proves worthless, then sue the surety.

(d) Upon investigation Mr. Rathje finds that the maker, R. Wilson,

is worthless and that Henry Vogel, the surety, is responsible. Against whom should Mr. Rathje bring action?

ANS. Against Mr. Vogel, surety.

(e) Upon examining the note, Mr. Rathje finds that it reads, "Sixty days after date I promise to pay." What kind of note does this make it?

ANS. This makes it a "joint and several" note.

(f) What is the significance of this?

ANS. It means the same as though it read "We, or either of us promise to pay." It is enforcible against both, or against either of the parties to it, as the holder chooses.

(g) Naturally, what does Mr. Rathje do about it?

ANS. Mr. Rathje sues the surety, Henry Vogel.

(h) Mr. Vogel defends against the note on the ground that the goods for which the note was given, were inferior to the sample by which they were bought. At the trial Mr. Rathje shows that he acquired the note in due course. Under these conditions, will Mr. Vogel's defense win?

ANS. No. Mr. Vogel's defense will be of no avail.

(i) How, then, will Mr. Rathje's suit come out?

ANS. He will recover judgment against Mr. Vogel, the surety, for the amount of the note and costs of suit.

(j) What will then be Mr. Vogel's duty?

ANS. Mr. Vogel must then pay the judgment, and may, in turn, sue R. Wilson, the real maker of the note.

Art. 272.—Surety.

(a) Although Mr. Vogel is a joint maker as to third parties, it must be remembered that, as between himself and R. Wilson, he is what?

ANS. As between himself and R. Wilson, Mr. Vogel is only a surety.

(b) Why is this true?

ANS. Because he had no financial interest in the original proceeds of the note.

(c) What right does this give him?

ANS. It gives Mr. Vogel the right to recover judgment against R. Wilson for the whole amount of the note and accumulated costs.

(d) Give an old saying concerning suretyship, centuries old.

ANS. "He that is surety. . . . shall smart for it."

NEGOTIABLE INSTRUMENTS.

Art. 273.—When an Instrument is Negotiable.

(a) To be fully and perfectly negotiable, an instrument must conform to how many requirements?

ANS. Six.

(b) Give them.

ANS. (1) It must be in writing and signed by the maker or drawer, or by his lawfully authorized agent.

(2) It must contain an unconditional promise or order to pay a certain sum of money.

(3) It must be payable on demand or at a fixed or determinable future time.

(4) It must be payable to order or to bearer.

(5) If the instrument is a bill of exchange the person on whom it is drawn must be specified.

(6) In some states (but not in those having the Negotiable Instruments Law), an obligation, to be strictly negotiable, must be payable at some bank named in the instrument.

(c) Does want of negotiability imply lack of legality or want of transferability?

ANS. It does not. A bill or note, although payable in property, or otherwise lacking negotiability, is transferable, and, if a valid contract, is enforcible.

(d) Does an instrument lacking negotiability pass like money?

ANS. No, the purchaser of such an instrument does not, in general, take any better title to it than was possessed by his transferor.

Art. 274.—Signing.

(a) By whom must all negotiable instruments be signed?

ANS. They must be signed by, or in behalf of, the person who becomes primarily liable for payment.

(b) What sort of signature will be sufficient?

ANS. A signature by initial, or by arbitrary marks, or by rubber stamp, will be sufficient if the intent of maker or drawer to create a valid instrument can be shown.

(c) How may persons who cannot write sign?

ANS. They may sign by mark.

(d) How is this usually done?

ANS. In the following form: JOHN (X) DOE, the mark (X) being made by the person to be bound by the signature.

Art. 275.—Payable in Money.

(a) In what must an instrument be payable to be negotiable?

ANS. Money.

(b) Is a note payable in property negotiable?

ANS. It is not. For example, B. made a note in which he promised to pay C. $1,000.00 in cotton. The note was held non-negotiable. Auerbach v. Pritchett, 58 Ala. m 451.

Art. 276.—Variance Between Words and Figures.

If the amount of the instrument written in figures differs from the amount written in words, which controls?

ANS. The amount written in words controls, but if there be no amount in words, the figures control.

Art. 277.—Time of Payment.

(a) What must an instrument provide to be negotiable?

ANS. It must provide a time of maturity.

(b) When is the date of maturity sufficiently certain?

(1) On demand.

(2) Upon the death of a certain party.

(3) On or before a certain date.

Art. 278.—Words of Negotiability.

(a) What words must an instrument contain to be negotiable?

ANS. They must contain words of negotiability. In general these are "or order" or "or bearer."

(b) Is a note payable to a certain person "or his assigns" negotiable?

ANS. It is not.

(c) How about checks payable to "cash," or to "bills payable," or to "sundries?"

ANS. They are held to be payable to bearer, and are negotiable.

Art. 279.—Certainty as to Amount.

(a) To be negotiable the instrument must be a promise or order for the payment of what amount?

ANS. It must be a promise or order to pay some certain, or definite amount.

(b) Name five conditions regarding certainty of amount which, under the Negotiable Instruments Law, may enter into an instrument without rendering it non-negotiable.

ANS. (1) The fact that it is payable with interest.

(2) By stated installments.

(3) By stated installments with a promise that upon default of payment of any installment, or interest, the whole shall become due.

(4) With exchange.

(5) With costs of collection or an attorney's fee, will not in most states, render the instrument non-negotiable.

(c) Will any or all these conditions render an instrument non-negotiable in any of the states having the Negotiable Instruments Law?

ANS. It will not, but the laws of other states are not in harmony on this point.

Art. 280.—Additional Provisions.

(a) How will the negotiability of an instrument be effected if the instrument contains a promise to do something in addition to making payment in money?

ANS. Its negotiability will be thereby destroyed.

(b) Name four additional clauses which, under the Negotiable Instruments Law, and in most states, do not impair the negotiability of an instrument.

ANS. The negotiability of an instrument is not impaired by reason of the fact that the instrument contains a clause:

(1) Authorizing the sale of collateral securities in case the instrument is not paid when due.

(2) Authorizing confession of judgment against the maker in case of default.

(3) Waiving the benefit of any law intended for the advantage or protection of the obligor.

(4) Giving the holder an election to require something to be done in lieu of the payment of money.

(c) Name five possible omissions and specifications in an instrument, either or all of which will not, necessarily, impair its negotiability.

ANS. The negotiability of an instrument is not necessarily impaired by reason of the fact that:

(1) The instrument is not dated.

(2) Because it states, or fails to state, the consideration, or to state that it is given "for value received."

(3) Because it fails to state the place where it is drawn, or the place where it is payable.

(4) Because it bears a seal.

(5) Because it specifies a particular kind of money in which payment is to be made.

Art. 281.—Antedating and Postdating.

(a) Is the negotiability of a note impaired by antedating or postdating it?

ANS. It is not, provided this is not done with an illegal or fraudulent purpose.

(b) When does a person to whom an instrument so dated is delivered, acquire title?

ANS. He acquires title from the date of delivery.

Art. 282.—Filling up Blanks.

(a) What does the Negotiable Instruments Law provide where an instrument is wanting in any material particular?

ANS. It provides that the person in possession thereof has a *prima facia* authority to complete it by filling up the blanks.

(b) How does it operate when a maker or drawer signs a note or bill in blank, in order that the paper may be converted into a negotiable instrument?

ANS. His act operates as a *prima facie* authority to the person to whom he delivers the paper to fill it up for any amount.

(c) In order that an instrument, delivered in complete form, may be enforced, after completion, against any person who becomes a party to it before its completion, how and when must it be filled?

ANS. It must be filled up strictly in accordance with the authority given, and within a reasonable time.

(d) What will be the case if such an instrument, after completion, is negotiated to a person in due course?

ANS. The instrument will be enforcible in his hands, regardless of the fact that it may have been filled up for a greater amount than was intended by the maker.

(e) Give an illustration of this.

ANS. If A. signed a blank negotiable note and delivered it to B., with instruction to fill up the instrument for a sum not exceeding $500.00; and if B. afterward wrongfully wrote his own name in the note as payee thereof, and inserted $5000.00 as the amount of the obligation, and then negotiated it in due course to C., A. would be bound to pay C. $5000.00.

(f) What will be the case when a maker of an instrument carelessly leaves space in a printed form whereby an alteration may be made without exciting the suspicions of a careful person?

ANS. The maker will be liable upon the instrument to a holder in due course when the opportunity for alteration has been exercised.

Art. 283.—Negotiation.

(a) When is an instrument negotiated?

ANS. When it is transferred from one person to another in such a manner as to confer ownership and possession upon the transferee.

(b) What is necessary to transfer a note or a bill, payable to bearer?

ANS. It is transferred by merely delivering it to the transferee.

(c) What is the effect when a bill or note made payable "to order" is indorsed without naming any transferee?

ANS. After such indorsement, the instrument becomes payable to bearer.

(d) Illustrate.

ANS. If A., being the payee in a bill or note payable to his order, indorsed the instrument by writing his name across the back of it, without naming any transferee, the instrument is transferable by mere delivery, until it is again indorsed, in full.

Art. 284.—Parties.

(a) What two classes may there be to a bill or note.

ANS. The parties to a bill or note are either "Original" or "Subsequent."

(b) Who are the original parties to an instrument?

ANS. Those whose names appear upon it at the time of its inception, all others are subsequent parties.

(c) Name the original parties to a bill.

ANS. The drawer, drawee, and the payee.

(d) Name the original parties to a note.

ANS. They are the maker and the payee.

(e) In states having the Negotiable Instruments Law, what term is applied to persons other than the payee, who write their names upon the back of the instrument before it has been originally issued?

ANS. They are called irregular indorsers.

(f) What rights have they?

ANS. They have the same rights as other indorsers.

(g) What are such indorsers called in some other states?

ANS. In some states such indorsers are treated as joint makers.

(h) In the latter case would they be entitled to notice of dishonor?

ANS. They would not.

Art. 285.—Liabilities of Drawer.

(a) What is the liability of the drawer of a bill?

ANS. The drawer of a bill is continuously liable to the holder for the amount, provided the payee, or other holder, uses due diligence in presenting the bill for acceptance and for payment, and, in the event of non-acceptance or non-payment, gives the drawer lawful notice of that fact.

(b) In general, what is the effect of negligence in presentment for acceptance or in presentment for payment, or failure to give notice of non-acceptance or of non-payment.

ANS. In general, negligence regarding any of these steps releases the drawer, unless he has waived these rights.

(c) Give five possible conditions, under any one of which the drawer would remain liable whether proper presentment or notice had or had not been given.

ANS. (1) Where one draws on a bank in which he has no funds.

(2) Where he draws upon himself.

(3) Where he draws upon a partnership in which he is a member.

(4) Where he draws upon a fictitious person.

(5) Where he draws upon a party incapacitated to contract.

Art. 286—Liability of Drawee.

(a) When does a drawee's liability begin?

ANS. When he accepts it.

(b) What is his liability after acceptance?

ANS. The same as that of the maker of a note.

(c) Of what must the drawee be sure?

ANS. The drawee must know the signature of his drawer.

(d) Why is this necessary?

ANS. Because if the drawee accepts a bill to which the drawer's signature has been forged, he cannot thereafter repudiate the bill, or recover from a holder in due course, money paid upon it.

Art. 287.—Liability of Maker and Acceptor.

(a) What is the difference between the liability of the maker of a note and that of the acceptor of a bill?

ANS. None. Their liability is identical.

(b) What demand or notice is necessary to fix this liability?

ANS. Neither demand nor notice is necessary. It arises by absolute contract.

Art. 288.—Liability of Payee.

(a) When does a payee's liability begin?

ANS. The payee incurs no liability upon a bill or note until he negotiates it.

(b) Suppose he indorses it; what of his liability?

ANS. His liability straightway becomes the same as that of any indorser.

(c) What is the payee's liability in case the paper is payable to bearer and he transfers it by delivery only?

ANS. The same as that of any other holder who transfers by delivery.

Art. 289.—Liability of Holders who Transfer by Delivery.

(a) Do holders who transfer by delivery have any liability?

ANS. One who transfers by delivery a bill or note payable to bearer, is not without liability.—

(b) Certain warranties arise from the mere fact of delivery. Name four of them.

ANS. (1) That the instrument is genuine, and in all respects what it purports to be.

(2) That he has good title to it.

(3) That all prior parties had capacity to contract.

(4) That he has no knowledge of any fact that would impair the validity of the instrument, or make it valueless.

Art. 290.—Liability of General Indorsers.

(a) To whom and to what extent does every indorser who does not qualify his indorsement, warrant the instrument?

ANS. (1) That the instrument is genuine and in all respects what it purports to be.

(2) That he has good title to it.

(3) That all prior parties had capacity to contract.

(4) That the instrument is, at the time of his indorsement, valid and subsisting.

(5) He further engages that, on due presentment, it shall be accepted or paid, or both, according to its requirements, and that, if it is dishonored, and the necessary proceedings on dishonor are duly taken, he will pay the amount of the instrument to the holder, or to any subsequent indorser who may be compelled to pay it.

Art. 291.—Forms of Indorsement.

(a) Name five different forms of indorsement.

ANS. (1) Indorsement in blank.

(2) Indorsement in full, or special indorsement.

(3) Restrictive indorsement.

(4) Qualified indorsement.

(5) Conditional indorsement.

(b) Give an example of each.

ANS.

In Blank.

Wm. W. Wightman.

In Full.

Pay to the order of Edwin C. Jones.
Wm. W. Wightman.

Restricted.

Pay to the order of Edwin E. Jones only.
Wm. W. Wightman.

Qualified.

Pay to the order of E. E. Jones without recourse on me.
Wm. W. Wightman.

Conditional.

Pay to the order of Edwin E. Jones upon the completion of certain repairs on the Merchants Bank as per contract.
Wm. W. Wightman.

Art. 292.—Liability of one who Indorses Without Recourse.

Has an indorser "without recourse" any liability, and if so, what?

ANS. Same as one who transfers paper by delivery, no more.

Art. 293.—Dishonor.

(a) A bill is dishonored by what?

ANS. By non-acceptance.

(b) Give two ways in which this may be brought about.

ANS. (1) When acceptance cannot be obtained.

(2) When presentment for acceptance is excused, and bill is overdue.

Art. 294.—When Presentment for Acceptance Must be Made.

When must presentment for acceptance be made?

ANS. (1) When the bill is payable after sight, or in any other case where presentment for acceptance is necessary to fix the maturity of the instrument.

(2) Where the bill expressly stipulates that it shall be presented for acceptance.

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

Art. 295.—When Presentment for Acceptance is Excused.

When is presentment for acceptance excused, and a bill treated as dishonored by non-acceptance?

ANS. (1) Where the drawee is dead, has absconded, is a fictitious person, or is without capacity to contract.

(2) Where, although presentment has been irregular, acceptance has been refused for some reason other than this irregularity.

(3) When the holder of a bill drawn payable elsewhere than at the residence or place of business of the drawee, has not reasonable time in which to make presentment for acceptance before the bill falls due.

Art. 296.—How Presentment for Acceptance is Made.

How must presentment for acceptance be made?

ANS. (1) By, or on behalf of, the holder.

(2) At a reasonable hour, on a business day.

(3) Before the bill is overdue.

(4) To the drawee, or to some person authorized to accept or refuse acceptance on his behalf.

(5) When drawn upon two or more persons, not partners, presentment must be made to each unless one has authority to accept for all.

Art. 297.—Acceptance.

Illustrate an acceptance.

ANS.

November 30, 1912.
Accepted.
Geo. Noble.

Art. 298.—Time for Acceptance.

(a) How long may the drawee have in which to decide whether or not to accept a bill?

ANS. Twenty-four hours.

(b) If the drawee takes this full time for deciding, when should the acceptance be dated?

ANS. As of the day of presentment.

(c) If the drawee destroys the bill or refuses to return it within the time limit, what is the result?

ANS. He will be deemed to have accepted it.

Art. 299, 300, 301.—Kinds of Acceptance.

(a) Name and define each of two kinds of acceptance.

ANS. (1) General. Without qualification.

(2) Qualified. Varies from the intent of the bill as drawn.

(b) Give the different ways in which an acceptance may be qualified.

ANS. (1) When payment is contingent upon fulfillment of a condition.

(2) When acceptance is for only part of the amount of the bill.

(3) When an acceptance limits payment to one place only.

(4) When time of payment is qualified.

(5) When less than all drawees accept.

Art. 302.—Acceptance for Honor.

(a) What is the object of an acceptance for honor?

ANS. To lend acceptor's credit to the bill.

(b) What is the liability of an acceptor for honor?

ANS. He is liable to the holder and all parties subsequent to the one for whose benefit he accepts.

(c) Illustrate a form of an acceptance for honor.

ANS. *Accepted supra protest for honor of J. D. Lucas.*

Wm. W. Wightman.

Art. 303.—Necessity of Presentment for Payment.

(a) What is the necessity of presentment for payment to maker of note or acceptor of bill?

ANS. (1) Without presentment at proper time and place further interest or cost of suit cannot be placed.

(2) Damages resulting from failure to present at proper time and place may be used by the maker or drawee as an off-set against the amount due on the instrument.

(b) What is the necessity of presentment for payment to indorsers of a note or bill?

ANS. It is necessary to present a note or bill at proper time and place in order to bind its indorsers. Failure to present, discharges indorsers from all liabilities except when the instrument is drawn for the accommodation of the indorser.

(c) When is presentment for payment excused?

ANS. (1) After the exercise of reasonable diligence.

(2) When the drawee is a fictitious person.

(3) When presentment has been expressly or impliedly received.

Art. 304.—Waiver.

(a) Who is bound by a written or printed waiver above the signature of an indorser?

ANS. That indorser only.

(b) Who is bound by a written or printed waiver embodied in the note or bill itself?

ANS. All parties to the instrument.

(c) Under the Negotiable Instruments Law what is the effect of the same words written or printed above the signature of the indorser of a note or bill?

ANS. Releases that indorser only.

(d) Under the Negotiable Instruments Law what is the effect of the words "Protest Waived," when written or printed on the face of a note or bill?

ANS. Releases all indorsers whose names appear on the instrument.

(e) In states in which the Negotiable Instruments Law is in force, how many formalities are waived by the words "Protest Waived" when written or printed on the face of a note or bill?

ANS. Six.

(b) Name them.

ANS. (a) Waive presentment for acceptance (if bill);

(b) Waive protest for non-exceptance (if bill);

(c) Waive notice of dishonor by non-acceptance (if bill);

(d) Waive presentment for payment (as to all negotiable instruments);

(e) Waive protest for non-payment (if a foreign bill);

(f) Waive notice of dishonor by non-payment (as to all negotiable instruments).

Art. 308.—Protest.

(a) When is an instrument protested?

Ans. When dishonored by non-acceptance or non-payment.

(b) What instrument must be protested under these conditions to protect holders interests? Why?

Ans. Foreign bills of exchange. To hold drawers and indorsers.

(c) May notes and Inland or Domestic bills be protested for similar cause?

Ans. Yes.

(d) Will failure to protest a note or Inland bill for non-acceptance or non-payment relieve the drawers or indorsers?

Ans. No. A matter of form and convenience only.

(e) Are notice of dishonor and protest for dishonor one and the same process?

Ans. No. Separate.

(f) What is a protest (or certificate of protest as it is often called)?

Ans. A written statement made by a Notary Public under his seal of office and attached to the bill or note for the purpose of furnishing every subsequent holder a means of readily proving that the instrument has been presented and dishonored.

(g) By whom may protest be made?

Ans. By any respectable resident of the place where instrument is dishonored, in presence of two or more credible witnesses.

Art. 309.—Contents of Certificate of Protest.

(a) What must be set forth in a certificate of protest?

Ans. (1) The time and place of presentment.

(2) The fact that presentment was made and the manner thereof.

(3) The cause or reason for protesting the instrument.

(4) The demand made and the answer given, if any, or the fact that the drawer or acceptor could not be found.

(b) When should protest be made?

Ans. On the day of dishonor.

Art. 310.—Summary of Omissions.

(c) Give a summary of omissions which discharge drawers and indorsers.

Ans. When the formality is not waived or otherwise excused, indorsers of a Foreign Bill are discharged in six ways as follows :

(1) By failure to present the instrument for acceptance, if acceptance is required.

(2) By failure to protest for non-acceptance when required.

(3) By failure to give notice of dishonor by non-acceptance when required.

(4) By failure to make presentment for payment at maturity.

(5) By failure to make protest for dishonor by non-payment.

(6) By failure to give notice of dishonor by non-payment.

(d) When the formality is not waived or otherwise excused, drawers and indorsers of an Inland bill are discharged in how many ways?

ANS. (1) By failure to present the instrument for acceptance when required.

(2) By failure to give notice of dishonor by non-acceptance when required.

(3) By failure to make presentment for payment at maturity.

(4) By failure to give notice of dishonor by non-payment at maturity.

(e) When formality is not waived or otherwise excused, indorsers of a note are discharged in how many ways?

ANS. (1) By failure to make presentment for payment at maturity

(2) By failure to give notice of dishonor by non-payment.

Art. 311.—Sureties.

(a) By what term is one known who signs his name upon the face of a note, having no pecuniary interest?

ANS. Surety.

(b) What relation does he bear to third parties?

ANS. He is joint maker. He is not released by failure to present for payment; nor is he entitled to notice of non-payment.

Art. 312.—Guarantors.

(a) Illustrate a guaranty.

ANS. *For value received I hereby guarantee payment at maturity of the within obligation.* *John J. Eccles.*

(b) Is a guarantor entitled to notice of dishonor in the sense that an indorser is?

ANS. No.

(c) Will want of notice of dishonor, standing alone, discharge him?

ANS. No.

(d) What will be the effect if the guarantor is damaged by want of notice?

ANS He will be discharged to the extent of the actual damage sustained thereby.

(e) How is the guarantor effected by an extension of the obligation or other change therein, made without the guarantor's consent?

ANS. It discharges him from further liability.

Art. 313.—Material Alteration.

(a) In states in which the Negotiable Instruments Law is not in force, what is the effect of a materially altered instrument in the hands of a holder in due course?

ANS. It is held void, and treated as a forgery.

(b) In the preceding case, what right has a holder in due course, provided he is not a party to the alteration?

ANS. He may enforce the instrument according to its original terms.

Art. 314.—Forgery of Signature.

What is the law regarding the value of an instrument bearing a forged signature?

ANS It is void in the hands of all holders.

Art. 315.—Usury.

(a) What is usury?

ANS. Unlawful interest.

(b) How are the penalties therefor determined?

ANS. By reference to the state statutes.

Art. 316.—Bonuses.

(a) Define bonus.

ANS A bonus is an extra sum of money received by a lender, over and above the interest on the loan.

(b) How are bonuses which, if added to the regular interest reserved make a total in excess of the legal rate, treated by some courts?

ANS. As usury.

(c) May such bonus be legally paid by a borrower to his own agent for procuring the loan?

ANS. It may.

Art. 317.—Payment of Interest in Advance.

Is it considered usury to collect the highest legal rate at the time of making the loan? That is, in advance?

ANS. No.

GENERAL EXAMINATION NO. 4.

Embracing the subject of Banking, treated in Articles 226 to 317 inclusive, appearing in Practical Law. Answers to the following questions should be neatly written and handed to the teacher. Number each answer to correspond with the question. Write your name and the current date on each sheet. Mark your paper Examination No. 4. Write only on one side of the sheet, and avoid erasures, blots, check marks, or other disfigurements.

1. How many kinds of banks? Name and define each.

2. Tell when, under varying conditions, a check should be presented for payment.

3. What is a depositor's duty regarding returned checks.

4. Give briefly, the duties of the following bank officers: President,

Vice-President, Cashier, Teller. From whom do all these receive their authority?

5. Who are the stockholders of the bank? What authority have they?

6. Draw up a draft corresponding with the following memorandum: H. Doane & Co., of Chicago, having sold goods int he amount of $5000.00 George Lucore & Co., upon the latters' agreement to accept their draft drawn payable ten days after sight, the following instrument:

(a) Name and define the parties to the preceding bill of exchange.

(b) On a form purporting to be the back of the preceding bill of exchange, show, in proper form, an indorsement in full to the Chicago City Bank, Chicago, Ill.

(c) Next show indorsement by the Chicago City Bank to the Merchants Bank, Englewood, Ill., for collection.

(d) Upon presentment for payment by the holder of this instrument, the bill was dishonored. Explain fully what this means. Who is the present holder?

7. (a) Charles W. Nelson, Chicago, bought of James Russo, New York, goods to the value of $3000.00, for which the vendee made payment by delivering to the vendor a 7%, 30-day negotiable note, payable at the Chemical Nat'l Bank, New York, and secured by Peter J. Davis, as surety.

(b) Show the above indorsement upon a form representing the back of the note.

(c) Write out this note complete. Upon receiving this note the vendor indorsed it in blank. Show indorsement.

The note, thus indorsed, passed into circulation and was transferred without further indorsement, through the hands of several parties until it finally came into the possession of Andrew Miller. Andrew Miller, being a prudent and thoughtful man, and knowing that the above note was liable to be cashed by anyone, in case it should become lost, wrote in the necessary wording to make the blank indorsement an indorsement in full.

(d) Show on the back of the note the indorsement as Mr. Miller caused it to read. Mr. Miller then indorsed the note to Frank Jezek, waiving protest and notice.

(e) Show this indorsement

(f) Had Mr Miller a right to do this?

(g) Why.

(h) Was it any advantage to Mr. Miller, and, if so, what?

(i) Was it any advantage to Mr. Jezek, and, if so, what?

Mr. Jezek then indorsed the note to Joseph May in such a way as to assume the least possible liability.

(j) What kind of indorsement was this?

(k) Show on the back of the note how it looked.

Mr. May now indorsed this same note to Niels Madsen in a manner whereby he (Mr. May), agrees to warrant payment of same.

(l) What sort of indorsement is this called?

(m) Illustrate it on the back of the note.

8. How many original parties to this note? Name them.

9. How many subsequent parties to this note? Name them.

10. When is an instrument negotiable?

11. When is an instrument said to be negotiated?

12. Name seven points of liability of the drawer of a bill of exchange or draft.

13. Name two points of liability of the drawee of a bill of exchange or draft.

14. Give the warrants made by a general indorser.

15. Name five different forms of indorsement.

16. To whom, when, where and how must presentment for acceptance be made?

17. Illustrate the form of an acceptance for honor.

18. Give a summary of omissions which discharge drawers and indorsers.

19. What must be set forth in a certificate of protest?

20. By whom may protest be made?

21. In states in which the Negotiable Instruments Law is not in force, what is the effect of a materially altered instrument in the hands of a holder in due course?

22. What is the law regarding the value of an instrument bearing a forged signature?

23. (a) What is usury?

(b) How are the penalties therefor determined?

24 (a) Define "Bonus."

(b) Is it considered usury to collect the highest legal rate of interest at the time of making the loan; that is, in advance?

LOANS, CREDITS AND COLLECTIONS.

Art. 318.—Loans.

(a) Give two ways of increasing the capital of a business firm.

ANS. (1) By selling an interest in the business.

(2) By negotiating a loan.

(b) Which is usually the preferable way?

ANS. By negotiating a loan.

(c) What are the two most important points to be considered by the borrower, in negotiating a loan?

ANS. (1) The lowest possible rate of interest.

(2) Adequate time in which to make payment.

(d) What is the lender's chief care?

ANS. (1) Sufficient security.

(2) Adequate rate of interest.

Art. 319.—Security.

Name several kinds of securities.

ANS. (1) Personal undertakings, such as, suretyships, indorsements, indemnity bonds, guarantees.

(2) They may be of the nature of real property or personal property; both mortgaged or pledged to secure repayment.

Art. 320.—Suretyship.

(a) What is meant by suretyship?

ANS. It is an undertaking to answer for the debt or default of another.

(b) How fully is the surety bound?

ANS. As fully as the principal promisor.

(c) If the surety has to pay, what recourse has he?

ANS. He has a right to full reimbursement from his principal.

(d) What is the result if the principal proves worthless?

ANS. The surety is without remedy and must bear the whole loss.

(e) From the foregoing questions do you infer that it is good business policy to act as a surety?

ANS. Positively not.

(f) Suppose the principal and the surety both prove worthless, what is the result?

ANS. The loss will fall upon the lender.

Art. 321.—Indorsement.

(a) In case of several indorsers, of whom does each indorser have the right to full reimbursement?

ANS. Against principal and each preceding indorser.

(b) What are joint indorsers?

ANS. Several indorsers agreeing to share the responsibility of suretyship, proportionally.

(c) As among themselves can they enforce this sharing of responsibility?

ANS. Yes.

(d) How as to third parties?

ANS. Each indorser is liable for the entire debt.

Art. 322.—Indemnity Bonds.

Explain the difference between indemnity bonds and money bonds.

ANS. Indemnity bonds express a suretyship for money or for any other obligation. Money bonds are generally an unconditional promise to pay money.

Art. 323.—Guaranties.

(a) What is a guaranty?

ANS. A collateral undertaking to pay the debt of another in case he does not pay it.

(b) How must it be made to be valid?

ANS. It must be in writing and signed by the guarantor.

(c) Is any special form necessary?

ANS. No. A letter or telegram would be sufficient.

(d) In case the guaranty is made for the purpose of inducing credit, is the credit sufficient consideration?

ANS. It is.

(e) What is the case if it is given after credit has been granted?

ANS. There must then be a distinct consideration given to support it.

(f) Name some things that may constitute such consideration.

ANS. (1) The renewal of a note.

(2) An extension of time.

(3) A forbearance on the part of the promisor.

(g) What is the guarantor entitled to in case he pays the obligation?

ANS. He is entitled to have turned over to him all collaterals or other securities.

(h) What will be the result if any one of these securities are released?

ANS. The guarantor is thereby discharged.

(i) When a guarantor has paid the guaranteed obligation, what recourse may he have?

ANS. He may recover pro rata from his joint guarantors, if any, or the total from the principal debtor.

Art. 324.—Mortgages.

(a) What is a mortgage?

ANS. A mortgage is a legal conveyance of property as collateral to secure the payment of a debt.

(b) Name the parties to a mortgage.

ANS. Mortgagor and mortgagee.

(c) Name three general classes of mortgages.

ANS. (1) Real estate mortgages.

(2) Chattel mortgages.

(3) Dual mortgages.

(d) Define each.

ANS. (1) Mortages of real estate are those which create a lien upon land.

(2) Chattel mortgages are those which create liens on personal property.

(3) A dual mortgage constitutes a lien on both real and personal property.

Art. 325.—Real Estate Mortgages.

(a) What should always be done as soon as you receive a mortgage?

ANS. Have it acknowledged and recorded.

(b) Suppose you receive a mortgage which you know at the time to be a second mortgage, but you have filed your second mortgage, while the first mortgage, issued at a prior date, has never been filed. Will you have a prior right?

ANS. No. "When the reason fails the rule fails."

(c) Can creditors whose claims accrued before the giving of an unfiled or unrecorded chattel mortgage complain that the instrument was kept from the records?

ANS. No. They have not heen injured thereby.

Art. 326.—Form of Real Estate Mortgage.

Are all real estate mortgage blanks of the same form?

ANS. No, they vary in different jurisdictions.

(See sample form, page 157.)

Art. 327.—Chattel Mortgages.

Need chattel mortgages be filed or recorded when the mortgaged chattels are immediately delivered to the mortgagee?

ANS. No, nor even reduced to writing.

Art. 328.—Insecurity Clause.

(a) What is provided in the insecurity clause?

ANS. That if at any time the mortgagee believes that the mortgage debt is insecured, he may immediately take possession of the mortgaged property.

(b) Considered from the mortgagee's standpoint, what is a better provision that could be made in the mortgage than merely the right to take possession?

ANS. That the mortgagee may at once proceed to foreclose upon and sell the mortgaged property, thus saving storage charges, avoiding depreciation, etc.

Art. 329.—Permission to Sell.

How should a mortgage be drawn in case of a going concern?

ANS. Covering all goods added to stock from time to time, with permission to sell, stock at no time to be reduced below a certain value.

Art. 330.—The Mortgage Note.

(a) By what is a mortgage usually accompanied?

ANS. By a note or bond.

(b) Why?

ANS. The mortgage is merely collateral security.

(c) In case of suit, against what may action be taken?

ANS. Against the note or bond; the mortgage may or may not be referred to.

(d) How should a mortgage-note or bond be identified?

ANS. With the mortgage, by writing on the note: "This note is secured by a real estate, or chattel (as the case may be) mortgage of like amount and date."

Art. 331.—Description of Mortgaged Property.

(a) How should mortgaged property be described?

ANS. So that a stranger could identify it without calling in outside aid.

(b) How should real estate be described?

ANS. As in the deed.

(c) How should chattels be described?

ANS. By kind, quantity, quality, and individual peculiarities and special marks.

Art. 332.—Foreclosure.

(a) Define foreclosure.

ANS. It is taking proceedings to bar all further rights of the mortgagor in the mortgaged property.

(b) Are court proceedings always necessary to foreclosure?

ANS. No.

(c) How do the statutes of some states provide that this may be done?

ANS. By merely advertising for a given time, then selling to the highest bidder.

(d) Does this apply to both real estate and chattel mortgages?

ANS. Yes, in some states, and to most chattel mortgages in most states.

Art. 333.—Sale of Mortgaged Property.

What recourse has the mortgagor, in some cases, where the mortgagee has not taken the utmost care to sell the mortgaged property to the highest bidder?

ANS. He may have the sale set aside.

Art. 334.—Deficit and Surplus.

(a) In case the mortgaged property sells at forced sale for less than the amount of the mortgage, what recourse has the mortgagee?

ANS. He has an action at law against the mortgagor for the deficit.

(b) How about it in case the mortgaged property sells for more than the face of the mortgage?

ANS. The surplus will go to the mortgagor, or to those to whom his interests have been transferred.

Art. 335.—Rights of Purchaser.

What can you say as to the rights of the purchaser of a mortgage?

ANS. He is substituted to such rights as the mortgagor had in the property at the time the mortgage was given and to all after acquired rights covered by the mortgage.

Art. 336.—Redemption.

(a) What is meant by the right of redemption?

ANS. It is the right to pay off the mortgage debt, together with all charges, within a certain time, allotted by law, after the mortgage has been foreclosed.

(b) May this right be assigned?

ANS. It may.

Art. 337.—Subrogation.

(a) What is meant by the right of subrogation?

ANS. It is the right which belongs to the holder of a subsequent lien by mortgage, or otherwise, to pay off a prior mortgage, and receive an assignment thereof.

(b) What is the object of conferring this right upon subsequent lien holders?

ANS. To enable them to protect themselves against loss.

(c) What effect upon subsequent liens has the sale of a prior lien?

ANS. It cuts off all subsequent liens.

Art. 338.—Dual Mortgages.

When a mortgage is dual in its nature, what provisions of law should be observed?

ANS. Those relating to both real estate and chattel mortgages.

Art. 339.—Deeds Operating as Mortgages.

(a) When does an absolute deed operate as a mortgage?

ANS. When given as security for the performance of an obligation.

(b) What must be done in such a case before the title will vest in the grantee?

ANS. The deed must be foreclosed the same as a mortgage.

(c) Has the grantor any right of redemption?

ANS. Yes, just as though it were a mortgage.

(d) How is it redeemed?

ANS. In the same manner as if it were in the form of a mortgage. (By duly advertising, then selling at public sale to highest bidder.)

Art. 340.—Deed with Contract to Recovery.

(a) In case an unconditional purchase and conveyance of property is made, by giving the grantor the privilege of repurchasing within a cer-

tain time at a fixed price, will the deed be construed as a mortgage?

ANS. No.

(b) What, in effect, has the grantee said to the grantor?

ANS. "I will not make you a loan upon your property, but I will purchase it outright. I will then give you an option for its repurchase. If you do not exercise the option, the property will simply remain mine."

(c) How could the grantee properly explain to the grantor, the advantage of the procedure over loaning and taking mortgage?

ANS. "The same amount of money that would enable you to repay a loan will enable you to exercise the option for repurchase. It is no hardship to you, but it may save me the cost and delay incident to foreclosure of a mortgage."

Art. 341.—Bill of Sale Given as Security.

(a) How is a bill of sale considered if given as security for the performance of an obligation?

ANS. It will be construed as a mere chattel mortgage.

(b) In such a case what is necessary to vest complete title in the vendee?

ANS. Foreclosure.

(c) Will an absolute, unconditional sale of this bill of sale followed by an option for repurchase act as in the case of a deed?

ANS. It will.

(d) How then, in such a case, is this bill of sale considered?

ANS. Not as a chattel mortgage; no foreclosure necessary.

(e) What is the chief object of a bill of sale?

ANS. To show that the holder is an innocent purchaser.

Art. 342.—Assignment of Mortgage.

(a) What is the effect of assigning a mortgage?

ANS. The assignee is substitued thereby to all the rights of the assignor.

(b) Does the assignment of a mortgage ever carry with it the title to any other instrument?

ANS. It carries with it the title to a note, or other instrument, secured by it.

(c) Does the assignment of a note carry with it *ipso facto* the title to the mortgage?

ANS. It does not.

Art. 343.—Pledges.

(a) What is a pledge as here considered?

ANS. A pledge is a delivery of personal property to be held as security for the performance of an obligation.

(b) What are the parties to a pledge called?

ANS. The party pledging is the pledgor, the one to whom pledge is made is the pledgee.

(c) What kind of property may be pledged?

ANS. Any personal property; such as, goods, chattels, money, promissory notes, patent rights, copyrights, policies of insurance, and money bonds.

(d) What, then, is the pledgee's best protection?

ANS. Investigation; he must ascertain the value and condition of the pledged stock at his own peril.

Art. 344.—Pledges of Corporate Stock.

(a) When corporate stock is offered as a pledge, of what should the pledgee assure himself?

ANS. (1) That the certificate is genuine.

(2) That the corporation by which it is issued has no existing lien by law upon the shares which it represents.

(b) If there is any doubt upon any of these points from whom should information regarding them be secured?

ANS. From disinterested officers of the issuing corporation.

(c) Are spurious certificates of stock less common than other forgeries?

ANS. No. They are quite common.

(d) How does a debt of a corporation effect the certificates of a stockholder?

ANS. It gives the corporation a lien upon the debtor's certificates of stock, which is paramount to the claim of any pledgee who takes the stock after corporate lien attaches.

(e) What is sometimes deemed prudent in case the pledged property is of great value?

ANS. To apply to a proper court for a decree of foreclosure and order of sale.

(f) Is this often done?

ANS. Not often.

(g) Why?

ANS. Because it involves considerable delay and expense.

(h) How much of pledged property can be sold?

ANS. Only so much as will pay the debt.

(i) Suppose the property is indivisible then how much may be sold?

ANS. The entire property.

(j) Supposing the pledged property sells for more than enough to satisfy the debt, what is done with the surplus?

ANS. The surplus proceeds of the sale, if any, after paying the debt and all interest and costs, must be at once delivered to the pledgor or his assignee.

Art. 345.—Foreclosure of Pledges.

(a) What resort has the pledgee in case the pledgor fails to perform the obligation secured by the pledge?

Ans. It is both his privilege and duty, after demanding payment, to proceed to foreclose the pledge.

(b) Give briefly the process of foreclosure.

Ans. (1) Pledgee should give pledgor notice of time and place of sale of the property pledged.

(2) Pledgee should advertise the foreclosure for a reasonable time.

(3) Pledgee should sell the pledged property at public sale(as advertised) to the highest bidder.

Art. 346.—Liens.

(a) What is a lien?

Ans. A lien is a claim and right of possession which one has upon the property of another as security for some debt or charge.

(b) In how many ways may liens be created?

Ans. Two.

(c) Name them.

Ans. (1) By contract.

(2) By law.

(d) Give illustration of each.

Ans. Mortgages and pledges are liens created by contract. Some of these created by operation of law are: Liens, attorneys' liens, vendors' liens, workmen's liens, carriers' liens, inn-keepers' liens, attachment liens, and judgment or execution liens.

Art. 347.—Vendors' Liens.

(a) How does a vendor's lien operate?

Ans. A vendor of personal property has a lien thereupon for the purchase price so long as he retains possession.

(b) Illustrate.

Ans. If goods have been sold by a merchant and set aside for the customer, the customer cannot lawfully take them away until the purchase price is paid.

(c) What is the case if the merchant voluntarily gives possession?

Ans. He thereby waives his lien.

(d) What legal aid are vendors of building material usually given?

Ans. They are usually given a lien by statute upon materials used in making improvements upon land.

(e) How are they enforced?

Ans. By selling, in due course of law, the debtor's interest in the land.

(f) What are such liens inferior to?

ANS. To recorded prior mortgages upon the real estate.

(g) What then, should the vendor of building materials investigate before selling?

ANS. The title to the land upon which the material is to be placed in buildings.

(h) Why?

ANS. That he may know the extent of his security.

Art. 348.—Workmen's Liens.

(a) What is meant by a workman's lien?

ANS. It is the claim a workman has upon any property as security for services performed thereon.

(b) Give an illustration.

ANS. A blacksmith who shoes a horse has a lien upon the horse, in case of refusal to pay.

(c) What will be the effect if the blacksmith permits the owner to take his horse away?

ANS. The blacksmith has absolutely waived his lien by the surrender of the horse.

(d) Suppose the lien-holder is dispossessed by stealth or force, may he retake the property?

ANS. He may, but he cannot recover it from an innocent purchaser who is a holder in due course, and to whom the obligee has sold it.

(e) Does a workman's lien ever attach land?

ANS. Workmen who construct permanent improvements upon real estate are usually permitted by statute to acquire a lien upon the land for the value of their services.

Art. 349.—Liens of Carriers and Others.

(a) What may a carrier acquire a lien upon?

ANS. Upon the goods carried.

(b) Upon what may an innkeeper acquire a lien for the value of entertainment supplied?

ANS. Upon the baggage or other goods of his guests.

(c) Upon what may a liveryman acquire a lien?

ANS. Upon the animals left with him for care and keep.

(d) Upon what may an attorney acquire a lien?

ANS. Upon the papers of his client and upon the judgment or decree rendered until payment is made for his services.

(e) In any and all of these previously mentioned cases, what is the effect of surrendering the property?

ANS. In every case it terminates the lien.

Art. 350.—Liens by Attachment.

(a) Name three provisions for acquiring a lien by attachment.

ANS. A creditor whose claim is due may speedily acquire a lien upon any property, real or personal, not exempt from execution, belonging to his debtor, under the following provisions, to-wit:

(1) Is about to move his property from the state.

(2) Has sold or concealed his property, or is about to do so, to defraud his creditors.

(3) Has absconded or concealed himself to avoid services of process.

(b) Are attachments ever issued on debts not yet due?

ANS. Yes, in some states.

(c) Is this the general rule?

ANS. No.

(d) What is required by the courts of most states by way of security, when a plaintiff takes out a writ of attachment?

ANS. The plaintiff is required to file a bond with the court, indemnifying the defendant against loss or damage occasioned by the seizure of his property in case the plaintiff fails or neglects to recover judgment.

Art. 351.—Garnishment.

(a) What is meant by the term garnishment?

ANS. It is an attachment of money, credits, or property in the hands of a third party.

(b) Is this form of attachment in frequent use?

ANS. Yes.

(c) For what purpose usually?

ANS. For the collection of debts.

(d) Give example.

ANS. If A. owes B. and C. owes A., B. may attach the credit of A. in C.'s hands and have it applied in payment of A.'s debt to B.

(e) Is there any way to attain the same result in states where the laws make a provision for garnishment?

ANS. Yes, generally by attachment.

Art. 352.—Judgment Liens.

(a) Upon what do judgment liens apply?

ANS. In many states judgments become a lien upon the real estate of the judgment debtor.

(b) How is it in other states?

ANS. In other states the lien may be obtained by issuing an execution and making a levy.

(c) What may be done if the judgment remains unpaid upon presentation of the lien?

ANS. The property may be advertised and sold practically as in the case of a mortgage.

(d) May execution levies be made upon personal property?

ANS. Yes, and the personal property sold to satisfy the claim.

Art. 353.—Exemptions.

(a) By what states have exemption laws been adopted?

ANS. By all states of the union.

(b) What is the meaning of this law?

ANS. That certain property of debtors shall be exempt, (that is, free) from the liens of judgments, and from seizure by attachment or execution.

(c) What is the obvious purpose of exemption laws?

ANS. It is to prevent a debtor being deprived of his every means of support.

(d) Do you consider this a just provision of law and, if so, why?

ANS. It is, because it would plainly be against public policy to render a debtor helpless, thus making him a public charge.

(e) Name some of the things which the exemption law of most states include.

ANS. In most states, a homestead of fixed extent or value is preserved to the debtor, also wearing apparel, household furniture and provisions, necessary domestic animals and the tools or utilities of his trade or profession.

(f) How are the statutes providing exemptions usually construed by the courts?

ANS. They are generally construed liberally in favor of the debtor.

(g) Name a few of the things that have been held exempt as the tools or utilities of trades or profession.

ANS. (1) The safe of a jeweler.
(2) The piano of a music teacher.
(3) A barber's chair.
(4) A printing-press and type.
(5) The library and instruments of a teacher or physician.

(h) What about pensions?

ANS. Pension money and property bought with pension money is exempt.

(i) What of the proceeds of other exempted property?

ANS. If exempted property be sold, the proceeds are also exempt.

(j) What is the case if exempted property under insurance is burned?

ANS. The insurance money is exempt.

(k) How long does a homestead, once acquired, remain a homestead?

ANS. Until changed by the act of the homesteader.

(l) What are a debtor's rights as to his time, talents and industry?

ANS. They are absolutely at his disposal. He may sell them or give them away. His creditors can lay no claim to them.

(m) May he give them to his wife?

ANS. He may, as well as to another. If his wife has a business, he may manage it for her without compensation.

(n) Will the fact that his services increase the value of his wife's property give his creditors a right to levy upon that property?

ANS. It will not.

Art. 354.—Tender.

(a) What effect has a legal tender upon a lien?

ANS. Mortgages and liens of all kinds are discharged by a legal tender of the full amount due at the time of tender.

(b) What will be the effect if such tender is refused?

ANS. The holder will forfeit all liens and all interest on the debt

(c) In general, then, what is the effect of a legal tender?

ANS. A valid tender stops the running of interest, stops further costs of any kind, and releases any pledge or securities, which must, upon demand, be delivered to the debtor.

(d) What constitutes a valid tender?

ANS. Tender, to be valid, must be made at a proper time and place, and if made pursuant to an obligation to pay money, legal tender money must be tendered

Art. 355.—Legal Tender.

What is legal tender money, and to what amount is each kind legal?

ANS. (1) A valid tender to any amount may be made in the United States in gold coin, silver dollars, treasury notes, or greenbacks.

(2) Silver dollars are legal tender up to Ten Dollars.

(3) Silver smaller than half dollars are legal tender up to Five Dollars.

(4) Nickel and bronze coins are legal tender up to Twenty-five cents.

(5) When any coin is so mutilated that its genuineness cannot be determined, it is not legal tender.

Art. 356.—Objections to Tender.

(a) Is it always material if tender is made in something other than money; as, for example, by check?

ANS. No. If payment was not refused for that reason.

(b) From the preceding question, then, do you reason that a refusal of tender should always be accompanied by reasons?

ANS. Yes, by all means, because objections not made at the time of tender are usually deemed waived.

Art. 357.—Amount to be Tendered.

(a) In what amount should a tender be made?

ANS. To be thoroughly safe, a tender should be made in legal tender money, in the exact amount to be paid.

(b) Is it sufficient to say to the obligee "Here is the exact amount of my debt?

ANS. No, the money must be produced and submitted by the obligee or his agent, to be counted.

(c) What precaution is it always best to take when making a tender?

ANS. It is always best to do so in the presence of witnesses, as proof of tender may become important.

Art. 358.—Keeping the Tender Open.

What can you say of the necessity of keeping the tender open?

ANS. A tender must be kept good. That is to say, if the obligee changes his mind and decides to accept the amount of a rejected tender, the obligor must make payment or the effect of the tender (at least so far as to stoppage of interest and costs is concerned) will be lost.

Art. 359.—Tender Admits Debt.

(a) Does one in any way bind himself by making a tender upon a disputed claim?

ANS. Yes, he admits the indebtedness to the amount of the tender.

(b) What will be the effect if it be afterward shown that the amount tendered was insufficient to pay the whole obligation then due?

ANS. The tender will be treated as ineffectual.

(c) In the last case, can the supposed obligor successfully disclaim that he owes the amount he tendered?

ANS. No, he cannot.

Art. 360.—Payment.

(a) Since payment is merely an accepted tender, what necessarily follows?

ANS. It follows that payment discharges all liens, and cancels the indebtedness.

(b) When full payment is made what right should the obligor always insist upon?

ANS. The surrender of the obligation paid and the release of all securities collateral thereto.

(c) Can the obligor, upon payment in full, compel the obligee to give a receipt in full?

ANS. No, unless the obligee has contracted so to do so.

(d) A receipt stating that the maker has received payment in full of all demands, is said to be what class of evidence, or proof?

ANS. It is taken as *prima facie* evidence.

(e) What is meant by this term *prima facie* evidence?

ANS. It means evidence to be accepted as proof until disproved.

Art. 361.—Payment to Wrong Person.

(a) What will be the effect if an obligor pays a debt to an obligee after the obligee has assigned it to a third party?

ANS. Unless he has been notified of the assignment, the obligor will be released by making payment to the original obligee.

(b) From this we should deduce what to be the duty of the assignee?

Ans. We learn that the assignee should always promptly notify the obligor of an account or non-negotiable obligation, of the assignment.

(c) Suppose that after due notice of the assignment of an obligation, the obligor pays the original obligee what will be the effect?

Ans. The obligor will not be released thereby, but must still pay to the assignee.

(d) What will be the effect if an obligor pays the amount of a negotiable instrument to a person who does not produce and surrender the instrument?

Ans. He may be held to pay the amount over again to any holder in due course.

(e) For the foregoing reason, what should the obligor demand of the obligee before paying for a note or bill which is supposed to have been lost, stolen or destroyed?

Ans. The obligor should demand of the obligee a bond of indemnity indemnifying the obligor against any loss or damage by reason of any possible future presentment of the instrument in question.

Art. 362.—Accepting Notes, Checks, and Orders in Payment.

Does the accepting of notes, checks or orders necessarily constitute a payment of a debt?

Ans. No, not in the absence of an express and definite agreement to the effect that it shall do so.

Art. 363.—Voluntary Payment.

(a) Can one who pays a debt for another recover from the debtor?

Ans. Only in case such payment can be clearly shown to have been made at the debtor's request.

(b) In case the payer cannot hold the original debtor, can the original debtor substantiate a claim that the debt has been paid?

Ans. Yes, the original debtor can avoid any further payment, but the payer is without remedy from the debtor.

(c) What, then, is the proper or best course to follow, when paying the debt of another?

Ans. To take an assignment in writing of such debt. When this is done the payer may enforce his claim against the debtor to the same extent that the assignor could have done.

Art. 364.—Compromise.

When will a check sent discharge a claim?

Ans. When accompanied by a letter explaining that the check is tendered in payment of a claim which is unliquidated or in dispute.

Art. 365.—Accord and Satisfaction.

(a) Can an agreement to accept a smaller sum of money as full

payment of a liquidated and undisputed larger sum, when without consideration, be made to hold?

ANS. It is absolutely void unless done for a definite and understood consideration.

(b) What will be the effect if the debtor does something in consideration of a smaller payment, which he should not otherwise have done by contract?

ANS. The agreement on the part of the creditor to accept smaller payment, will then be sustained.

Art. 366.—Application of Payment.

(a) When a debtor owes several debts due to the same obligee and makes a payment, has the debtor a right to say upon which debt the payment shall apply?

ANS. He has. He may even demand that the payment be applied upon a secured debt, though he may owe others that are unsecured.

(b) What is the case providing the debtor gives no instructions as to what debt a payment is to be applied?

ANS. The creditor may accept a part payment of any debt due.

(c) May a creditor apply a payment on an unsecured debt when the debtor has secured debts in the creditor's favor?

ANS. Yes, if no stipulation or objection is made by the debtor.

Art. 367.—Collection of Debts.

(a) What caution should always be used in connection with collecting debts?

ANS. The creditor should use great care that he be drawn into no illegitimate collecting schemes, either of himself or through an agent.

(b) Why such special caution?

ANS. The principal is responsible for the acts of his agent, and frequently business men are successfully sued because of questionable methods of their collecting agencies?

Art. 368.—Procedure in Collection.

(a) Name seven logical steps of procedure in the collection of a debt.

ANS. (1) Ascertain as fully as possible the financial condition, resources and liabilities of the debtor.

(2) Present the claim and attempt to procure payment of all, or at least a part, immediately in money.

(3) If payment is refused or delayed, attempt to procure a mortgage, pledge, or approved note as security.

(4) If security is refused and a crisis in the debtor's affairs seems imminent, prepare to make an attachment levy if there is sufficient unincumbered property, or if the debtor has friends who are likely to aid him. This may be done by quietly issuing attachment, then going

with an officer to the debtor and telling him what is to be done if settlement is not made, pointing out to him that his credit will suffer; that other creditors may petition him into bankruptcy. Induce him, if possible, to give a note signed by an approved surety or guarantor.

(5) If debtor is without unincumbered assets, and he has no friend who is likely to become his surety or guarantor, resort to persuasive methods. Call upon him at stated times. Remember that gentlemanly treatment, firmness and punctuality will accomplish more, as a rule, than bluff and bluster.

No matter how worthless the claim, never let the debtor know you think it worthless. Give him to understand you consider him a man of honor who will pay as a matter of course.

(6) If, after exhausting every means, you are unable to procure any payment, induce the debtor to give you his note. Endeavor to have him keep the interest upon this obligation from falling into arrears. Keep the obligation in force. However improbable it may seem at the present moment, remember that the debtor may some day, by his own efforts, or by some freak of fortune, be able to pay.

(7) If the debtor refuses to give even an unsecured note, it is usually the best practice to place the matter in court and procure judgment. Keep the judgment renewed. It may prove worthless at the very end, but the policy is correct, and you will gain by it far oftener than you will lose.

Art. 369.—Collection of Outlawed Claims.

(a) What law is it that all the states have limiting the collection of claims?

ANS. The Statutes of Limitation.

(b) Is this law an unmixed good?

ANS. No, it often works a hardship to creditors.

(c) What do you think would be the result if the Statutes of Limitation were abolished?

ANS. It would give rise to vastly greater evils.

(d) Mention some of the dishonest practices which gave rise to the enactment of the Statutes of Limitation.

ANS. Before such statutes were enacted, parties might, and often did, wait until witnesses were scattered or dead, papers lost or destroyed, circumstances forgotten and conditions changed, and then proceed to enforce claims against which successful defense could have been made within a reasonable time after the cause of action arose.

(e) Is the notion that some seem to have, that the Statutes of Limitation are for the benefit of the dishonest a correct one?

ANS. Decidedly not. They are intended to keep stale claims out of court, to discourage indifference, and to encourage diligence.

(f) Is the fact that a claim is barred by the Statutes of Limitation conclusive proof that the claim is worthless?

ANS. No, an honest man's debt never outlaws. Besides many are too ignorant, and many others too proud to take advantage of such a law.

Art. 370.—When the Statute Becomes Operative.

(a) When does the Statutes of Limitation become operative?

ANS. From the time of last payment of principal or interest.

(b) Suppose no payment has been made?

ANS. From date of maturity of the obligation.

(c) What is the time?

ANS. The time is regulated by the statutes of the several states, which must be ascertained.

(d) What extra allowance is made by some of the states?

ANS. In some states three days grace is allowed beyond the due date.

(e) Is this the case in this state?

ANS. (Answer according to facts).

(f) How is the time computed on running accounts which have had no payments?

ANS. The limitation runs from date of each item.

(g) What governs the limitation upon an account stated (i. e., where the parties have had a settlement and have agreed upon a balance due)?

ANS. The limitation runs from the date of settlement.

(h) What is the case upon a mutual open account made up of charges and credits?

ANS. The limitation runs from the date of the last item be it charge or credit. These rules are general, subject to change by the various state statutes.

Art. 371.—Suspension of Statute.

(a) When are the Statutes of Limitation usually held to be in suspension?

ANS. During the absence of the debtor from the state where the debt is payable.

(b) What is the case if the debtor is followed to another state and sued?

ANS. The limitation law of the state where suit is brought governs.

Art. 372.—Limitation Withdraws Remedy.

(a) Do the Statutes of Limitation invalidate a debt?

ANS. No, it merely withdraws the tardy claimant's remedy.

(b) What is necessary to be done by a debtor to avail himself of the protection of the Statutes of Limitation?

ANS. He must insist upon the benefit of the statutes, before judgment is entered against him.

(c) Do debtors often fail to gain the benefit of the Statutes of Limitations because of this neglect?

ANS. Yes, it is not unusual, through ignorance or indifference, to permit creditors to recover judgment on outlawed claims?

Art. 373.—Renewal.

(a) What is the effect of a new, written promise to pay, or a partial payment of an outlawed debt?

ANS. It renews the obligation, putting it upon the same footing as originally.

(b) What is the effect when one of several joint debtors makes a part payment or renews the debt?

ANS. It renews the obligation as to him only.

Art. 374.—Unauthorized Application No Renewal.

(a) May a payment made by a debtor owing several bills be applied to an outlawed bill?

ANS. Yes, in the absence of instructions to the contrary.

(b) Will such an application renew the entire outlawed claim?

ANS. No, an unauthorized application of a payment upon an outlawed debt produces no renewal, but may apply to the amount of that payment only.

Art. 375.—Written Acknowledgment.

What must be the nature of the terms authorizing an instrument to be taken out of the statute of frauds?

ANS. The terms must be distinct and unambiguous. The debt must be sufficiently described to be identified.

Art. 376.—Assignments for Benefit of Creditors.

(a) What provision regarding assignments is made by the common law, and by the statutes of most states?

ANS. They permit a debtor to assign all his property to a trustee to be sold by the trustee for the benefit of all creditors.

(b) How do the statutes of some states differ in this?

ANS. In that the assignor is permitted to select and prefer certain creditors.

(c) Which is most advantageous to the creditors; an assignment without preference, or bankruptcy proceedings?

ANS. An assignment without preference, because the cost of administrating the estate is less than in bankruptcy proceedings.

(d) Which is the better for the debtor?

ANS. Bankruptcy proceedings, as the debtor is released from practically all further liability whether his estate pays his creditors fully or only in part, while by assigment he remains liable for unpaid balances.

Art. 377.—Bankruptcy.

(a) How is bankruptcy divided?

ANS. Into two classes, voluntary and involuntary.

(b) Define each.

ANS. Voluntary bankruptcy is that which results from the debtor's own petition. Involuntary bankruptcy is that which results from the petition of persons other than the debtor.

Art. 378.—Who May Become Bankrupt?

(a) Who may become bankrupt?

ANS. Any natural person who owes debts may become a voluntary bankrupt.

(b) May a corporation become a voluntary bankrupt? Why?

ANS. No. A corporation is not a natural person.

(c) Who may be adjudged an involuntary bankrupt?

ANS. Any natural person (except a wage earner or a person engaged chiefly in tilling the soil) owing debts to the amount of $1000.00 or over.

(d) What companies and corporations may be adjudged involuntary bankrupts?

ANS. An unincorporated company, or bank, or any corporation engaged principally in manufacturing, trading, printing, publishing, mining, or mercantile pursuits, owing debts to the amount of $1000.00 or over.

Art. 379.—Acts of Bankruptcy.

(a) What always leads to a judgment of involuntary bankruptcy?

ANS. Some one or more of the acts of bankruptcy, as follows:

(1) Having conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay or defraud his creditors, or any of them.

(2) Having transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors.

(3) Having suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference.

(4) Having made a general assignment for the benefit of his creditors or, being insolvent, having applied for a receiver or trustee for his property, or when, because of insolvency, a receiver or trustee has been put in charge of the debtor's property.

(5) Having admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

(b) When may a judgment of bankruptcy be taken?

ANS. A person, firm, or corporation capable of bankruptcy may be adjudged a bankrupt if shown to have performed an act of bankruptcy at any time within four months preceding the filing of the petition for such adjudication.

Art. 380.—Insolvency.

(a) What step is necessary before bankruptcy involving insolvency can be declared?

ANS. The insolvency must be proved.

(b) When is a debtor deemed by law to be insolvent?

ANS. When his whole property shall not, at a fair valuation, (present market value), be sufficient in amount to pay his debts.

(c) At what valuation should bills and accounts receivable be listed?

ANS. At their actual, not necessarily their nominal, value.

Art. 381.—Discharge.

In consideration of a surrender of all of his property not exempt from execution, the court has authority to discharge the bankrupt from all his provable debts except what?

ANS. (1) Taxes.

(2) Alimony.

(3) Liabilities arising through fraud, embezzlement, misappropriation, or defalcation while acting as an officer, or in any fiduciary capacity.

(4) Liabilities arising through false representations, or for wilful or malicious injuries to the person or property of another, or for the maintenance and support of his wife and child.

(5) Claims which have not been duly scheduled in time for proof and allowance, with the name of the creditor, if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy.

Art. 382.—Debts First Paid.

(a) What debts must be defrayed before the general creditors can be paid out of the proceeds of the bankrupt's estate?

ANS. (1) Taxes.

(2) Cost of preserving the bankrupt's estate.

(3) Fees and costs of administration.

(4) Wages of workmen, clerks and servants not exceeding $300.00 each, earned within three months before the proceeding was commenced.

(5) Bona fide secured claims, and claims having lawful priority.

(b) How will all other claims be paid?

ANS. Holders of claims not falling within the classes above enumerated will be paid without preference and all alike, such percentage of their claims as the residue of the bankrupt's estate affords.

Art. 383.—Uses of Bankruptcy.

By whom, and for what purpose is bankruptcy commonly resorted to?

ANS. (1) By debtors to rid themselves of insupportable debt, and so obtain a new start in life, debt free.

(2) By creditors, as a convenient means of winding up estates.

(3) It is particularly useful in preventing preferences being shown certain creditors, thus securing an equitable distribution of the debtor's estate.

GENERAL EXAMINATION NO. 5.

Embracing the subjects of Loans, Credits and Collections treated in Articles 318 to 383 inclusive, appearing in Practical Law. Answers to the following questions should be neatly written and handed to the teacher. Number each answer to correspond with the question. Write your name and the current date on each sheet. Mark your paper Examination No. 5. Write only on one side of the sheet, and avoid erasures, blots, check marks, or other disfigurements.

1. Give two ways of increasing the capital of a firm.
2. Name several kinds of securities.
3. Name two classes of bonds, and explain the difference between them.
4. Tell how many classes of mortages you know of, and define each.
5. (a) What is meant by foreclosure?
   (b) Give two ways in which a foreclosure may be brought about.
6. Tell what you can about the subject of "Redemption."
7. What is meant by the "Right of Subrogation?"
8. What is the chief object of a bill of sale?
9. What is the effect of assigning a mortgage?
10. When Corporate Stock is offered as a pledge, of what should the pledgee assure himself?
11. (a) What is a lien?
    (b) Name two ways in which liens may be created.
12. Define "Workman's Lien," and illustrate.
13. What may a carrier acquire a lien upon? Illustrate.
14. Name three provisions for acquiring a lien by attachment.
15. What is meant by the term "Garnishment?"
16. Is there any way to attain the same result in states whose laws make no provision for garnishment? If so, how?
17. (a) In many states upon what do judgment liens apply?
    (b) How is it in other states?
18. (a) By what states have "Exemption Laws" been adopted?
    (b) What is the meaning of the law?
    (c) Name a few things that have heen held exempt, as the tools or utilities of trades or professions.
19. (a) What effect has a legal tender upon a lien?
    (b) What will be the effect if such tender is refused?

(c) What is legal tender money, and to what amount is each kind legal tender?

(d) In what amount should a tender be made to be thoroughly safe?

(e) What can you say as to the necessity of keeping the tender open?

(f) Does one in any way bind himself by making a tender upon a disputed claim?

20. What will be the effect if an obligor pays a debt to an obligee after the obligee has assigned it to a third party?

21. When a debtor owes several debts due to the same obligee and makes a payment, has the debtor a right to say upon which debt the payment shall apply?

22. What caution should always be used in connection with collecting debts? Why?

23. Name seven logical steps of procedure in the collection of a debt.

24. (a) What law is it that all the states have, concerning the limiting of claims?

(b) What is the object of this law?

25. (a) What is the effect of a new, written promise to pay, or a partial payment of an outlawed debt?

(b) Name and define two classes of bankruptcy, and state when one is bankrupt.

CORPORATIONS.

Art. 384.—Characteristics.

(a) Define a corporation.

ANS. A corporation is a legal person.

(b) How is its existence affected by the life or death of its shareholding members?

ANS. Its existence is entirely separate from that of the persons who own its shares and administer its business. These may die, but the corporation will continue unchanged.

(c) What of the relative liability of the corporation and its individual stockholders?

ANS. The corporation is not liable for the debts of the stockholders, and the stockholders, are not, in general, liable for the debts of the corporation.

(d) In whose name does a corporation do business?

ANS. A corporation acts in its own name, buying, selling, contracting, suing and being sued, as if an individual.

(e) Name four points of special advantage to be gained by incorporating a business.

ANS. (1) Through the corporation the savings of many are accumulated and devoted to a single enterprise.

(2) By means of the corporation, the inventor is enabled to ally his ingenuity with capital.

(3) The tradesman is enabled to interest his assistants in his business without surrendering control.

(4) The promoters of great enterprises are enabled to draw together funds from many sources for the purpose of accomplishing a common object.

(f) What reason can you mention why corporations exist of necessity?

ANS. It would be difficult to imagine a partnership having several hundred members, each having an equal voice in the management of its affairs, each able to bind the credit of all, etc. Many corporations have thousands of stockholders.

Art. 385.—Corporations Compared with Partnerships.

(a) What is the effect of the death of a partner?

ANS. The partnership is immediately dissolved, and its affairs must be closed up.

(b) Would the same result be brought about by one partner selling out his interest?

ANS. It would.

(c) May money be borrowed upon a partnership interest?

ANS. No.

(d) Is a partnership interest readily sold?

ANS. No.

(e) By whom are the affairs administered in a corporation?

ANS. By a selected body of men called "Directors."

(f) Do these directors have unlimited power in transacting business for the corporation?

ANS. They act within certain limits.

(g) How are these limits fixed?

ANS. By the charter, and by the by-laws enacted by the stockholders.

(h) How is a corporation affected by the death of a stockholder?

ANS. It goes on unchanged.

(i) How does the failure of a corporate enterprise affect the credit of its individual members?

ANS. Not at all.

(j) How does the death of a stock-holder affect the corporation?

ANS. In no way. His heirs stand in his stead.

(k) May money be borrowed upon corporate stock?

ANS. It may.

(l) How does this affect the credit of the corporation?

ANS. It in no way reflects upon the credit of the corporation.

(m) Must a stockholder in a corporation obtain the permission of any one before he can sell his shares or any part of them?

ANS. No, he may sell them at will.

(n) How is the amount of money which may be placed at the command of a corporation limited?

ANS. Only by the size and soundness of the enterprise.

(o) What proportion of the great business undertakings are now carried on by means of corporations?

ANS. Practically all.

Art. 386.—Charter.

(a) From what source are the powers of a corporation derived?

ANS. From the state under whose laws it is created.

(b) In what instrument are these general powers granted by the state expressed?

ANS. In the charter.

(c) What states have statutes under which corporations may be formed?

ANS. All the states.

(d) Are these all alike?

ANS. No, they differ widely, in general scope and requirements, but their purposes are similar.

(e) How many persons may incorporate?

ANS. Any number not fewer than three, by the laws of most states.

(f) How, in a general way, is this done?

ANS. By the incorporators, not less than three, signing and acknowledging before some officer authorized to take acknowledgments, articles of association in writing, specifying the following:

(1) The name of the corporation.

(2) The amount of its capital stock and the number of shares into which it is divided.

(3) The place at which the business of the corporation is to be conducted.

(4) The purpose or purposes for which the corporation is formed.

(5) The amount of capital stock subscribed, and the proportion thereof paid in at the time of organization.

(6) The duration of the corporation, which in many states is unlimited.

(7) The names and addresses of the incorporators, and the number of shares of stock subscribed for by each.

Art. 387.—Name.

What restriction is placed upon corporation names?

ANS. The name assumed by a corporation must not conflict with the name of another existing corporation in the same or a similar line of busi-

ness. The use of a name which does so conflict may be enjoined by the courts.

Art. 388.—Capital Stock and Shares.

(a) What is the capital stock of a corporation?

ANS. The capital stock of a corporation is the total amount the company is able to obtain by the sale of its stock at par.

(b) What is meant by shares?

ANS. By shares we mean the equal parts into which the stock is divided.

(c) When are shares said to be fully paid and non-assessable?

ANS. When par value has been paid to the corporation in cash or in property.

(d) What is meant by the term "Treasury Stock?"

ANS. Shares become treasury stock when they have been once issued by the company for par value and have been afterward re-acquired by the company through gift or purchase.

(e) When are shares subject to assessment?

ANS. When shares are originally sold by the company for less than par value they remain subject to assessment for an amount equalling the difference between the price paid for them and par.

(f) Can stock ever, under any circumstances, be issued for less than par, and yet remain non-assessable?

ANS. It can. When it has been once issued at par and afterward re-acquired by the company, the company may then reissue it at any price fixed by the board of directors, and such reissued stock, though sold at less than par, having been once fully paid, remains non-assessable.

(g) What then, may be said of treasury stock?

ANS. Fully paid treasury stock is non-assessable, no matter at what price issued.

(f) What can you say of the face value of shares of stock?

ANS. They vary. Usually $100.00 but often $50.00, $25.00, or even as low as $1.00, and sometimes $1000.00, or more.

Art. 389.—Payment of Stock.

(a) How may stock be paid for?

ANS. In cash or in property.

(b) What, in this case, does the term property include?

ANS. Lands, chattels, leases, good will, trade marks, patents, copyrights and personal services.

(c) In the absence of fraud, what is taken in many states as conclusive evidence of the value of corporation property accepted in payment for shares?

ANS. The judgment of the directors.

(d) Is stock often issued for property of an intangible nature; such as, copyrights, good will, etc.?

ANS. It is, very frequently.

(e) When stock is issued for property at an over-valuation, what is said of it?

ANS. It is said to be "Watered Stock."

Art. 390.—Location.

(a) Where must the location of the principal place of business usually be?

ANS. In most cases, within the state where the corporation is chartered.

(b) With what comparative favor are foreign and domestic corporations usually treated by state legislation?

ANS. Domestic corporations are usually shown more favors. Almost all states impose certain restrictions upon foreign corporations.

(c) Is it within the power of a state to exclude a foreign corporation?

ANS. It is.

Art. 391.—Powers and Purposes.

(a) What is meant by the powers and purposes of a corporation?

ANS. The object for which it is created; the means of carrying out those objects.

(b) What states are especially noted for the almost unlimited range of purposes for which they will charter corporations?

ANS. New Jersey, Maine and Delaware.

(c) Are the powers they grant much greater than the powers granted by other states?

ANS. They are but slightly greater.

(d) What limits the powers of a corporation?

ANS. The charter granted by the state. A corporation has no powers except those conferred upon it by its charter, and such implied powers as are necessary to make effective the powers expressly conferred.

(e) Give an illustration of the above.

ANS. A corporation having express power to conduct manufacturing, would have implied power to acquire land and to build a factory thereupon.

(f) Would a manufacturing corporation have implied power to organize subsidiary corporations in other states?

ANS. They would not.

(g) When a corporation performs an act unauthorized by its charter, what legal term is applied to the act?

ANS. The act is said to be *ultra viras* (beyond power).

(h) What can you say of a corporation's benefits or liabilities connected with an *ultra viras* act?

ANS. A corporation will not be permitted to accept the benefits of an *ultra viras* act and at the same time to shield itself from liability by a claim that the act was unauthorized.

(i) What are the ordinary powers of a corporation?

ANS. They are three-fold, as follows:

(1) To contract and be contracted with.

(2) To purchase, hold and deal in property.

(3) To sue and to be sued.

All of these acts are to be done within the scope of the corporate purposes and pursuant to its charter and by-laws.

Art. 392.—Subscriptions and Payment Thereof.

(a) When does one first become a stock holder in a corporation?

ANS. From the moment of signing the articles of association, which includes a statement of the number of shares each has subscribed for, duly set opposite the subscribers' names.

(b) To what does this subscription interest entitle the subscribers?

ANS. It entitles them to vote at all meetings of the stockholders.

(c) Is this interest transferable?

ANS. It is, even before any certificates of stock have been issued.

(d) If this subscription interest be transferred, what rights does the transfer carry to the transferee?

ANS. All the rights of the original subscriber.

(e) May subscriptions be taken in any other way than in connection with the articles of association?

ANS. Yes, subscriptions may be made and accepted either before or after the articles of association are signed, and entirely apart from them.

(f) When and how are payments upon subscriptions called in?

ANS. By notice by the board of directors as the funds are needed from time to time.

(g) In case of default in payment by a subscriber, what may be done?

ANS. Payment may be enforced by suit.

Art. 393.—Duration.

(a) What can you say of the duration of a charter?

ANS. In some states perpetual charters are granted. In other states corporate existence is limited to a term of years.

(b) How is continuation usually provided for, when a corporation has reached the time limit of its charter?

ANS. It may be continued by reorganization without liquidation.

Art. 394.—Incorporators.

(a) Who are the incorporators of an institution?

ANS. The persons who join in forming the corporation are called the incorporators.

(b) What legal limitation is placed upon persons who may become incorporators?

ANS. Since articles of association are a contract between the signers and the corporation formed, it follows that the incorporators must be persons capable of binding themselves by contract.

Art. 395.—Recording Articles of Association.

(a) When is an organization said to become a corporation "*de jure?*"

ANS. When the articles of association have been properly filed and recorded as required by law.

(b) What does the expression "*de jure*" mean?

ANS. To all the world.

(c) If, through any neglect, technical compliance with the law regarding the filing and recording of articles of association should be omitted, what term is applied to the organization?

ANS. It is said to have become a corporation "*de facto.*"

(d) What is meant when we say an organization has become a corporation "*de facto?*"

ANS. It means as to the whole world, except the state under whose laws it is created.

(e) Who can take advantage of the fact that a corporation is improperly formed?

ANS. The state alone, and not private individuals.

(f) What results in case the articles of association are entirely foreign to the law under which it assumes to exist, or where incorporation is attempted under a void law?

ANS. No incorporation, either *de jure* or *de facto* results, and the individual members become partners and remain liable as such.

(g) What constitutes the measure of the power of a corporation and how may it be inquired into?

ANS. When a corporation is organized under a general law, the statute under which it is formed, together with its articles of association constitute its charter. One who would inquire into the authority of a corporation must seek it in these instruments. The statutes of the state and the articles of association are the measure of the corporation's power.

Art. 396.—By-Laws.

(a) What comes next in authority after the charter in the government of corporations?

ANS. The "By-Laws."

(b) What are the by-laws?

ANS. They are rules of conduct formulated by the stockholders for the government of the concern.

(c) Are the by-laws always binding, and if so upon whom?

ANS. All reasonable by-laws are always binding upon stockholders, and upon third parties after being duly notified.

(d) What limit is there upon the by-laws that may be adopted by corporations?

ANS. If by-laws are in conflict with the terms of the charter, they will be void to that extent. The charter is paramount.

(e) How are the dates for holding meetings of stockholders and directors fixed?

ANS. Usually by the by-laws.

(f) What are some other provisions usually embodied in the by-laws?

ANS. (1) The by-laws usually define the powers and duties of the officers of the company.

(2) Provide the date of termination of the fiscal year and the time for the payment of dividends.

(3) They should also, in every case, provide the means for their own amendment, unless provision therefor is made by the statute.

(g) To whom under the laws of some states, may the right to make the by-laws be delegated by the stockholders?

ANS. To the board of directors.

(h) In case both the stockholders and the directors should formulate by-laws and contention arise over the two sets, which would prevail?

ANS. Those made by the stockholders will prevail.

(i) Name some of the features commonly covered by a set of by-laws, say of a manufacturing company.

ANS. (1) Date of annual meetings.
(2) Votes.
(3) Quorum.
(4) Proxies.
(5) Notice of annual meetings.
(6) Special meetings of stockholders.
(7) Meetings of board of directors.
(8) Quorum of directors.
(9) Powers of board of directors.
(10) Officers and their duties.
(11) Joinder of offices.
(12) Vacancies.
(13) Checks, drafts and orders.
(14) Promissory notes.
(15) Corporate seal.
(16) Fiscal year.
(17) Transfers of stock.
(18) Dividends.
(19) Amendments.

Art. 397.—Preliminary Investigation.

(a) What should one always do before investing?

ANS. Before investing, investigate.

(b) With what should one familiarize himself before becoming a stockholder in a corporation?

ANS. With the laws under which the corporation is organized, and with the articles of association, and the by-laws. The prospective investor should also require and retain a financial statement of the con-

dition of the company, its assets and liabilities, and should learn something of its history and of the capacity and integrity of its managing officers.

(c) What other vital point for investigation especially if the corporation is a new one?

ANS. The investor should assure himself that he is not paying for fictitious values.

(d) Give an illustration of the last named principle.

ANS. A., B. and C. form a corporation with an authorized capital stock of $30,000.00. A. and B. pay up one-half by investing patents of U. S., of no present value, but estimated by A. and B. to be worth $15,000.00. C. put in cash $15,000.00. C. has virtually given A. and B. a half interest in his $15,000.00 for which he takes in return, a half interest in their worthless patent.

(e) What can you say of the importance of good management?

ANS. Good management will make almost any business flourish; continued bad management will wreck the most promising enterprise.

(f) How is the inequality between the investment of money and of property of unascertained value often corrected?

ANS. By issuing a class of shares known as "Preferred Stock."

Art. 398.—Kinds of Stock.

(a) How many and what classes of stock shares are commonly recognized?

ANS. Two classes; common and preferred.

(b) Define each class of stock shares.

ANS. Common stock is without special contractual advantages. Preferred stock *does* enjoy such advantages.

(c) Enumerate some of the advantages of preferred stock over common stock.

ANS. (1) Preferred stock is usually entitled to payment of dividends to a certain amount before the common stock can participate in the corporation's profit.

(2) Preferred stock may be either cumulative, or noncumulative. When cumulative, it must be paid the amount of all passed dividend whenever there are sufficient declared dividends to pay them, before any dividends can be paid upon the common stock. When noncumulative, a dividend passed is lost.

(d) Upon what are the preferences accorded to preferred stock based?

ANS. Upon contract between the stockholders and the corporation.

(e) How are these terms usually set forth?

ANS. The terms of the contract are usually printed upon the certificate of preferred stock.

(f) Do these terms vary to any great extent?

ANS. Yes, greatly in different corporations.

(g) What is meant by the term "fully participating?"

ANS. This means that after paying a certain per cent upon the preferred shares, they are still entitled to share with the common stock, without distinction in all remaining declared dividends.

(h) Are preferred shares ever issued containing all these privileges?

ANS. They are, sometimes.

(i) Are preferred shares sometimes made non-participating; that is, so that they cannot participate in any but the first preferred rate of gain?

ANS. Yes.

(j) Illustrate how this might prove a disadvantage.

ANS. The common stock might prove so profitable as to bear 25% over and above the preferred 6%. The 6% preferred non-participating shares would then be producing their owners 6% profit, while the common shares would be producing their owners 25%.

(k) Generally, which is considered the more valuable?

ANS. Usually preferred shares are the more valuable.

Art. 399.—Voting Powers.

(a) How are the stockholders' powers of voting controlled and regulated?

ANS. Unless otherwise provided by law, each share of stock entitles the holder thereof to one vote on all subjects coming before any meeting of the stockholders.

(b) Is there any distinction between the voting powers of common and preferred stock?

ANS. In the absence of contrary provision, there is no distinction.

(c) Is there ever any preference shown to the holders of one class of shares over the holders of the other class, as regards the management of the affairs of the corporation?

ANS. Yes, in the absence of the statutes to the contrary, the holders of common stock are sometimes given this preference by limiting the holders of preferred stock to a minority representation only.

(d) What is the principle prompting this?

ANS. Since the holders of common stock can receive no profit until the preferred stock dividends have been paid, it is often deemed just to give them the management of the corporation, so that they may have the fullest opportunity to make a profit for themselves, as well as for the holders of the preferred stock.

(e) What results if any one stockholder owns one share or more in excess of half of the issued stock of a corporation?

ANS. He can control the corporation.

(f) How can he do this?

ANS. He can choose at least a majority of the board of directors, and in states where the cumulative voting law is not in force, he can elect the entire board. As the business of a corporation is controlled by

its board of directors and that board's agents, the control of the board is the control of the corporation.

Art. 400.—Cumulative Voting.

(a) What is the meaning of the expression "cumulative voting?"

ANS. By statute in a number of states, each stockholder may accumulate all of his votes upon one candidate, or he may divide them among several candidates, as he sees fit.

(b) What advantage may be derived from such cumulation of votes?

ANS. It affords minority shareholders greater opportunity for self protection.

(c) How?

ANS. (1) By concerted action in using this right, less than half the stock of a corporation can elect a minority of the directors.

(2) Any one stockholder may be able to elect one or more members of the board friendly to him and to his interests.

Art. 401.—Proxies.

(a) May shares be voted by the holders thereof in any other way than in person?

ANS. Yes, shares may be voted by an agent holding a power of attorney to act for the shareholders; this is called voting by proxy.

(b) May this power once granted to an agent be revoked?

ANS. It may be at will of the shareholder, unless that granted power was coupled with the interest.

(c) To whom may the power to vote by proxy be given?

ANS. To any one capable of acting as an agent.

(d) Need such agent be himself a stockholder?

ANS. No.

Art. 402.—Transfer of Stock.

(a) What do the by-laws of corporations usually provide regarding the transferability of stock?

ANS. That it shall be transferred upon the books of the company only.

(b) Does this by-law invalidate transfers made by indorsement and transfer only?

ANS. No, it cannot. The stockholder has that right regardless of the by-laws to the contrary, and the transferee's title is good.

(c) What, then, is the purpose of such a provision in the by-laws?

ANS. That the corporation may depend upon its records, as to who are its stockholders.

(d) Has the corporation a right to depend upon its records?

ANS. Yes; if a corporation without notice of this transfer pays a dividend to A., B. cannot recover the dividend from the corporation.

(e) How are the records of such transfers kept by the corporation?

ANS. In a special book called the "Transfer Record."

(f) How is this transfer of stock regularly made?

ANS. By the transferee indorsing an assignment upon the stock certificate and surrendering the certificate to the company for reissue pursuant to the terms of the transfer.

(g) What should the company do?

ANS. The surrendered certificate should be cancelled and retained by the company, a new certificate being issued to the proper party.

(h) Has the corporation a right to refuse to transfer stock to a bona fide transferee?

ANS. No, not even though the corporation feels that it will be detrimental to the company's interests.

Art. 403.—Powers and Duties of Officers.

(a) Primarily, the officers of the corporation consist of whom?

ANS. Of a Board of Directors.

(b) What elective and appointive power have the board of directors, as regards officers?

ANS. This board of directors may, and usually does, elect from its own number, a president, vice-president, secretary, and a treasurer. It may also appoint such other agents as the purposes of the corporation require.

(c) May the board of directors go so far as to appoint even a manager, or legal counsel?

ANS. They may, and frequently do.

Art. 404.—Directors.

(a) What are the directors responsible for in general?

ANS. In general, the directors of a corporation are charged with the management of the property and affairs of the company.

(b) Has a director, as such, more authority than any other stockholder?

ANS. No, excepting during a session of the board duly convened.

(c) When only have a majority of the board of directors power to bind the company by their action, and how?

ANS. Only at a session of the board duly called, and by motions or resolutions duly passed.

(d) May directors be given special authority as agents, to bind the company?

ANS. Yes, directors or other persons, may be given authority as agents, to bind the company by their acts.

(e) How does the agent of a corporation compare with the agent of an individual?

ANS. The agent of a corporation stands upon the same footing as the agent of an individual.

(f) If a corporation continues for any considerable time to permit an employee to transact its general business can it later deny that such agent had authority?

ANS. It cannot. He becomes their agent, *ipso facto*.

Art. 405.—President.

(a) Has the president by virtue of his office alone, any more authority than any other stockholder?

ANS. No, except as such power is delegated to him by the charter, the by-laws, or by the acts of the board of directors.

(b) Are the powers of the president varying in degree?

ANS. Yes, he may be a mere figure-head, or almost an absolute dictator.

(c) Must the company honor the president's acts even though he exceeds his authority?

ANS. No, if the president clearly exceeds his authority, the corporation is not bound by his acts, unless it ratifies them.

Art. 406.—Vice-President.

In general, has the vice-president more power than other stockholders?

ANS. No, except in case of the absence or disqualification of the president, when the vice-president succeeds to his full power and authority.

Art. 407.—Secretary.

(a) In general, what are the duties of the secretary?

ANS. The secretary of a corporation is the keeper of the records of its meetings.

(b) How should these be kept?

ANS These records should be kept fully and with great care, usually in a book provided for this purpose.

(c) What are these official records said to be?

ANS. They are the memory of the corporation.

(d) Name some things that should appear in these records.

ANS. (1) All motions, and resolutions, including by-laws.

(2) Dates of all meetings, how called.

(3) Names of all stockholders and number of shares held by each.

(4) The names of the officers and their terms of office, etc. In fact, everything of importance pertaining to the company's business.

(e) What should be the first official act of each meeting?

ANS. The reading, correction and adoption of the minutes of the preceding meeting.

(f) May the secretary have other duties and powers?

ANS. He may, and frequently does have other duties assigned him,

and other powers conferred upon him by the board of directors or designated by the charter, or the by-laws.

Art. 408.—Treasurer.

(a) Who is the treasurer?

ANS. He is the custodian or keeper of the corporate funds.

(b) Where should these funds be kept?

ANS. In a depository selected by the board of directors.

(c) What steps are frequently taken to insure the safe handling of the corporate funds?

ANS. It is quite customary to place the treasurer under bond for the faithful performance of his official duties, and for prompt surrender to his successor of all books and property incident thereto.

(d) What should the treasurer do beside merely receiving and paying out all moneys?

ANS. The treasurer should keep an accurate record of all receipts and disbursements.

(e) Wherever practicable, what further evidence of all payments should be provided?

ANS. All disbursements, even of small sums, should be evidenced by proper vouchers, which should be carefully preserved.

(f) What further caution should be exercised?

ANS. The treasurer's books should be audited by a disinterested committee or an expert accountant, at least once each year.

(g) Is this for the protection of the company only?

ANS. No, it is equally for the protection of the treasurer, and should be welcomed by him.

Art. 409.—Salaries of Officers.

(a) Are the directors, as such, entitled to salaries?

ANS. Only when so expressly agreed by provision therefor in by-laws or charter.

(b) May a director become entitled to a salary by reason of special services?

ANS. He may. Thus, it is perfectly proper to provide that the president, secretary, treasurer, manager, and attorney shall have a fixed salary.

(c) Would it be proper to provide that directors should receive compensation for attendance upon the meetings of the board?

ANS. It is perfectly proper, but in the absence of any such provision, there is no implied contract on the part of the corporation to make such compensation.

(d) Does the above apply equally concerning salaries to officers?

ANS. It does.

(e) Will salaries voted by directors to themselves, or fixed by those in control of the corporation to the detriment of the corporation's minority stockholders, be held illegal?

ANS. Generally, yes, if it appears that such salaries are excessive.

Art. 410.—Annual Reports.

(a) Make a general statement as to the requirement of the laws of most states regarding annual reports of corporations.

ANS. Under the laws of most states, corporations are required to file with some state officer, (usually the secretary of state), an annual report setting forth certain information designed for the benefit of the state and the public at large.

(b) What can you say of the failure of the corporation to do this?

ANS. Penalties are usually imposed for failure to comply with this requirement.

(c) Does the law favor penalties?

ANS. It does not, hence the state must do everything required on its part in order to charge the corporation, its officers and stockholders with liability upon default.

(d) What is the usual penalty imposed for failure to file the annual report in accordance with the requirements?

ANS. Usually the penalty is cancellation of the charter of the corporation.

Art. 411.—Receivers.

(a) What is usually done upon a corporation becoming insolvent or grossly mismanaged?

ANS. It is generally possible to cause the company to be placed in the hands of a receiver.

(b) Who may cause this to be done?

ANS. The creditors of the corporation, or its stockholders or directors.

(c) Who is a receiver?

ANS. A receiver is merely the agent of the court for the purpose of managing the business of the company with a view to correcting its defects if possible, and again restoring it to its stockholders.

(d) If the receiver finds correction impossible, what is done?

ANS. The receiver proceeds to wind up the affairs of he concern, collecting its assets, and distributing them to its creditors.

(e) What disposition is made of surplus funds, should there be any after all creditors are satisfied, and all expenses paid, including receiver's services?

ANS. They are divided ratably among the stockholders, usually showing a preference to the holders of preferred stock, if there be any.

Art. 412.—Dissolution.

(a) By whose consent may a corporation usually be dissolved?

ANS. By the consent of the stockholders.

(b) When the corporation's charter expires, what privileges have the stockholders, usually?

ANS. They usually may either re-organize or liquidate.

(c) If the latter course is chosen, what are the proceedings?

ANS. The assets of the concern are sold, its debts and expenses of administration paid, and the net residue, if any, is divided among the stockholders according to their respective holdings.

(d) Do holders of preferred stock have any advantage over holders of common stock in the process of liquidation?

ANS. Yes, upon dissolution, holders of preferred stock must, usually, be paid the par value of their stock, plus accumulated dividends due, before any payment can be made to the holders of common stock.

GENERAL EXAMINATION NO. 6.

Embracing the subject of Corporations treated in Articles 384 to 412 inclusive, appearing in Practical Law. Answers to the following questions should be neatly written and handed to the teacher. Number each answer to correspond with the question. Write your name and the current date on each sheet. Mark your paper Examination No. 6. Write only on one side of the sheet, and avoid erasures, blots, check marks, or other disfigurements.

1. What is a corporation?

2. Give six points of comparison between corporations and partnerships.

3. What is a charter and how is it obtained?

4. Define the following terms: Capital Stock, Shares, Par Value, Treasury Stock, Watered Stock.

5. What is meant by the powers and purposes of a corporation?

6. What states are especially noted for the almost unlimited range of purposes for which they will charter corporations? Are the powers they grant greater than the powers granted by other states?

7. (a) What limits the powers of a corporation?
   (b) What is meant by subsidiary powers?

8. Who are the incorporators of a corporation, and what legal limitation is placed upon them as to numbers and capacity?

9. (a) Define the terms: "dejure," "defacto," "ipso facto."
   (b) When is an organization said to become a corporation dejure?

10. What comes next in authority after the charter in the government of corporations?

11. Name and number at least 15 of the 19 important features commonly covered by a set of by-laws, say of a manufacturing company.

12. What should one always do before investing?

13. (a) How many and what classes of stock shares are commonly recognized?

(b) Define each.

(c) Give some of the advantages of each under varying circumstances.

14. How are stockholder's voting powers controlled and regulated?

15. What is meant by the expression "Cumulative Voting," and what advantage may be derived from it?

16. Tell what you can of the term "proxy" as associated with corporations.

17. (a) Primarily, the officers of a corporation consist of whom?

(b) What elective and appointive power have they?

18. Number and name the usual officers of a Board of Directors of a corporation, giving briefly the general duties of each.

19. (a) What steps are frequently taken to insure the safe handling of the corporate funds?

(b) What is necessary to be done to discharge all the obligations thus imposed?

20. What can you say regarding salaries of directors and officers, as such?

21. Tell what you can concerning the Annual Reports of corporations.

22. (a) What is usually done upon a corporation becoming insolvent?

(b) Who may cause this to be done?

23. By whose consent may a corporation usually be dissolved?

24. When a corporation's charter expires, what privileges have the stockholders, usually?

25. Do holders of preferred stock have any advantage over holders of common stock in the process of liquidation?

TEACHER'S KEY

Problems following Article 26, Practical Law (Text)

1. Yes. Yes, the city might set up the defense of want of due care.
2. No.
3. Yes.
4. Yes.
5. Yes. Yes.
6. Yes.
7. Yes.
8. No.
9. No.
10. Yes.
11. To the finder.
12. To B.

Problems following Article 119, Practical Law, (Text)

1. No.
2. No.
3. Yes.
4. No.
5. No.
6. Yes.
7. Yes.
8. No.
9. Yes.
10. No.
11. Yes.
12. Yes. Yes.
13. Yes.
14. Yes, if A accepts the part of the books delivered.
15. No.
16. No.
17. Yes.
18. Yes.
19. Yes. Yes.
20. Yes. No.
21. Yes.
22. No, not if A knew that B was drunk.
23. No.
24. Yes.
25. No.
26. Yes. They could bring action to compel A to carry out his part of the contract.
27. Yes.
28. Yes.
29. Yes, if the residence was not a homestead. If the residence was not a homestead, and the transfer took place within four months of bankruptcy it could be set aside though a money payment had been made.
30. Yes.
31. No.
32. No.
33. No.
34. No.
35. Yes.
36. A is not liable.
37. No.
38. No.
39. No. Gambling contracts are void.
40. Yes.
41. No.
42. No.
43. Yes.
44. Yes. In a reasonable time.
45. Conditional.
46. No.
47. No.
48. Yes.
49. No.
50. No.
51. Yes. He may cancel the contract and recover any money paid.

52. No.
53. Yes.
54. No.
55. Yes.
56. Yes.
57. No.
58. When the note is paid or outlawed.
59. No.

Problems following Article 225, Practical Law (Text)

1. Yes.
2. Yes.
3. Yes.
4. Yes.
5. Yes. $1000. No.
6. Yes.
7. Yes. He could collect the 50 per cent as agreed.
8. No.
9. Yes, unless the share of the profit is considered as rent for the drill.
10. Yes.
11. Yes.
12. Yes.
13. No.
14. No.
15. Yes.
16. No.
17. Yes.
18. Yes.
19. Yes.
20. Yes.
21. No.
22. No.
23. Yes.
24. No.
25. Yes.
26. No.
27. No.
28. No.
29. $25.
30. Yes.
31. When the balance is paid.
32. Yes, two dollars for each car shipped by A.
33. Yes.
34. No.
35. When cash is paid.
36. On delivery.
37. Yes.
38. C. No.
39. When the books are sold.
40. Yes.
41. Yes.
42. Yes.
43. Yes.
44. No.
45. Yes.
46. No.
47. Must accept the balance due and deliver deed.
48. No.
49. No.
50. Yes.

Problems following Article 317, Practical Law (Text)

1. Yes.
2. O.
3 J.
4. Yes.
5. A.
6. No one.
7. No.
8. Yes.
9. H.
10. E is a preferred creditor and is entitled to be paid the $876 before any of the general depositors are paid.
11. No.
12. Not liable if they have acted in good faith.
13. The Battle Creek Bank, by weight of authority, but not true in many states.
14. No.

5. No.
6. One hundred dollars.
7. Yes, for $10,000.
8. Yes.
9. No.
0. No.
1. Yes.
2. No.
3. Yes.
4. No.
25. No.
26. Yes.
27. Yes.
28. Yes.
29. No.
30. No.
31. No.
32. Yes.
33. No.

Problems following Article 383, Practical Law (Text)

1. Until revoked.
2. No.
3. Yes.
4. No effect.
5. Yes. Yes.
6. No.
7. He is entitled to the re- of the mortgage.
8. No.
9. No.
10. No. If the amount had not been previously agreed upon.
11. No.
12. Yes.
13. The debt is renewed.
14. Yes.
15. Yes. It does not renew the note.
16. No.

Problems following Article 412, Practical Law (Text)

1. The court restrains the r company from using the e.
2. A, B, and Company as artners.
3. Yes.
4. Yes.
5. Yes.
6. Yes.
7. Same as the first problem. Could not be restrained.
8. No.
9. Yes.
10. Not legal. Combination in restraint of trade.

d National

9
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